

X-Originating-IP: [65.213.2.213]
Subject: Acton/ACHC: Willow-Central proposals
Date: Thu, 29 Mar 2007 15:03:53 -0400
X-MS-Has-Attach:
X-MS-TNEF-Correlator:
Thread-Topic: Acton/ACHC: Willow-Central proposals
Thread-Index: AcdyNP3egB8nYxGfQvy15PVlrqVubQ==
From: "Stephen D. Anderson" <SAnderson@AndersonKreiger.com>
To: "Nancy Tavernier" <ntavern@comcast.net>
Cc: "Don Johnson" <djohnson@acton-ma.gov>

Hi Nancy:

I am responding to your email of 3/20/07, with questions on the RFP submissions. In answering the questions below, I am mindful that the RFP states as follows:

- o ACHC "reserves the right to waive any informalities in the proposal process and to accept the proposal(s) deemed to be in the best interest of ACHC."
- o ACHC "reserves the right to interview or to seek additional information from any RFP Respondent after the opening of Proposals but before entering into a Disposition Agreement"

My responses to your specific questions are as follows (your text is italicized; my responses are in bold):

Q1. *There is a math error in Mark O'Hagan's Pro Forma that incorrectly calculates the Sources, understating them by the proceeds from the sale of the 2 bedroom unit in the duplex. The total sales should have been listed as \$664,000 and Mark lists it as \$506,500. When he calculates the need for a subsidy, he computes the gap between his projected total development cost of \$583,148 and his total sales, adds 10.01% profit to the cost and comes up with \$135,000 as a subsidy request. The actual calculation using \$664,000 in sales and \$583,148 in cost would generate a surplus with a profit and a consideration to be offered to ACHC of \$22,500.*

Remedy: *We would like Mark to correct the math in the Sources but make no other adjustments in the Pro Forma. We want him to be allowed to correct the Price Summary Form, based on the math error in the Pro Forma, to reflect a Consideration to be offered to ACHC, delete the subsidy request, maintain the conditional grant request of \$100,000, and hold to a 10.01% profit. In doing this revision, Mark would be agreeing to stand by his cost numbers since they cannot change. Having heard the price proposals read out loud, he knows his costs were very low compared to the other proposal and his request for a subsidy less than half of the other proposer. We would like to find his cost numbers credible and want him to stand by them.*

SDA Response: **ACHC can and should allow Mark to correct the Price Summary Form, based on the math error in the Pro Forma.**

Q2. *Steve Marsh's cost numbers are quite high, especially the residential construction cost figure. The subsidy is a bit higher than we anticipated. He has had the construction costs estimated by a local lumber company, they are not guesses but they may also include some hidden profits. There is a dramatic cost differential between these two proposals.*

Remedy: *We would like to be able to negotiate a lower subsidy number with the proposer.*

SDA Response: **The RFP evaluation criteria state that "the RFP Respondent must specify its proposed purchase price offered for the Property and any proposed grants the RFP Respondent will request from ACHC and/or the Town of Acton (such as Community Preservation Act funds). In this way, ACHC will be able to compare each offer based on the net financial gain or net financial subsidy." ACHC cannot allow a bidder to change his price after the bid opening, because that would be unfair to other bidders. However, ACHC can allow a bidder to correct a mistake in its proposal. In addition, once a proposal is selected on the basis of the comparative evaluation criteria, ACHC can condition the award on the negotiation between ACHC and the proposer as to a mutually acceptable subsidy.**

Q3. *The missing letters may or may not be considered "minor informalities" but we do think a letter from a lender is important. Neither supplied them.*

Remedy: *We would like to request the submittal of these letters.*

SDA Response: ACHC can and should waive the oversight in the proposal process and request the submittal of these letters.

Q4. *The Land Disposition Agreement did not appear to bother Mark O'Hagan, he suggests one deletion. Steve Marsh circled several sections but did not explain his concerns.*

Remedy: We would like to clarify their concerns during interviews.

SDA Response: ACHC can and should clarify their concerns during the interviews.

Stephen D. Anderson
ANDERSON & KREIGER LLP
One Canal Park, Suite 200
Cambridge MA 02141

Direct Dial: 617-621-6510
Direct Fax: 617-621-6610
Wireless: 617-510-1159

Main number: 617-621-6500
Main Fax: 617-621-6501

e-mail: sanderson@andersonkreiger.com

web site: www.andersonkreiger.com

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Acton Community Housing Corporation

Nancy Tavernier, Chairman

TOWN OF ACTON

Acton Town Hall

472 Main Street

Acton, Massachusetts, 01720

Telephone (978) 263-9611

achc@acton-ma.gov

March 29, 2007

Mark O'Hagan
MCO & Associates, Inc.
206 Ayer Road – Suite 5
Harvard, MA 01451

Dear Mark,

Thank you for responding to the RFP for the disposition of land for the Willow-Central project, as proposed by the ACHC.

In beginning the initial screening process of the proposals, we noticed that there is a mathematical error in your Development Pro Forma (Exhibit R, Section B Profit Analysis, Sources). This error appears to carry over to the Price Summary Form.

I am requesting that you correct the math error in the Pro Forma and the Price Summary Form and resubmit the two forms by US mail to:

ACHC
Attn: Nancy Tavernier
Acton Town Hall
472 Main St.
Acton, MA 01720

Please also copy me electronically at <ntavern@comcast.net>. If you have any questions, feel free to contact me by email or phone at 978-263-9611.

Thank you for your attention and your interest in our proposal.

Sincerely,



Nancy E. Tavernier, Chair
ACHC

X-Originating-IP: [65.213.2.213]
Subject: RE: Willow Central
Date: Thu, 5 Apr 2007 14:38:33 -0400
X-MS-Has-Attach:
X-MS-TNEF-Correlator:
Thread-Topic: Willow Central
Thread-Index: Acd3paERGA46lQ5fT/ueEVuXJhsUkAAC+40w
From: "Stephen D. Anderson" <SAnderson@AndersonKreiger.com>
To: "Nancy Tavernier" <ntavern@comcast.net>

The filings correct the previous calculation error and the revised forms are in order.

Steve

From: Nancy Tavernier [mailto:ntavern@comcast.net]
Sent: Thursday, April 05, 2007 1:12 PM
To: Stephen D. Anderson
Subject: Fwd: Willow Central

Hi Steve,

Attached please find Mark O'Hagan's corrected filings for Willow-Central for your review.

Why it took a week to get this, I will never know, but needless to say I am very pleased to have 2 viable proposals for Willow-Central. This is quite stunning actually.

In the Pro Forma, Mark has corrected the math error in the Profit Analysis Source section which triggered a minor adjustment in the Marketing fee, 3% of the total sources, doing that boosted the Total Development costs by \$4961. He has also submitted a new Price Summary Form to reflect the corrected Pro Forma and requests no subsidy nor offers no consideration.

We hope you will find these revisions to meet the definition of corrections and not a change of price. If so, we are ready to proceed. We have a selection committee that includes 2 members of ACHC (Ryan & Nancy), 1 member of the Board of Selectmen (Lauren) and 1 member of the Finance Committee (Pat Clifford). Once the CPO designation went to me and not Don, we decided to forgo having a staff person sit on the committee, partly because the likely staff members are consumed with other work and because most have worked with the proposers and would have already formed an opinion.

The plan is for the Selection Committee to meet once to go over the RFP and the responses and lay out the selection process as spelled out in the RFP. Then we will schedule a meeting to interview each proposer and make a selection that night. I would like to make an award prior to May 3 when I will be out of town for 2 weeks.

I will await your ruling on the appropriateness of Mark's revisions.

Thanks.

Nancy

X-Originating-IP: [209.225.8.183]
From: "Mark O'Hagan" <markohagan@mcoassociates.com>
To: "Nancy Tavernier" <ntavern@comcast.net>
Subject: Willow Central
Date: Thu, 5 Apr 2007 12:06:30 -0400
X-Mailer: Microsoft Office Outlook 11
Thread-Index: Acd3nF8ETNq3xxU+Q42SYSf3dYjGIQ==
X-Chzlr: 0

Hi Nancy:

Attached please find a cover letter, pro forma and price summary form.

Thanks for noticing the mistake – those pesky spreadsheets.

I did put a copy with original signatures in the mail to the Town Hall address for your records.

Have a great day. Please call with any questions you may have.

Sincerely,

MCO

Mark C. O'Hagan
MCO & Associates, Inc
P.O. Box 372
Harvard, MA 01451
978-456-8388

Acton Community Housing Corporation

Nancy Tavernier, Chairman

TOWN OF ACTON

Acton Town Hall

472 Main Street

Acton, Massachusetts, 01720

Telephone (978) 263-9611

achc@acton-ma.gov

TO: Pat Clifford, Lauren Rosenzweig
FROM: Nancy Tavernier
SUBJECT: Willow-Central Selection material
DATE: April 9, 2007

Enclosed please find the two proposals, one from Mark O'Hagan of MCO Associates and one from Stephan Marsh of Westchester Co. Also I have put copies of various documents that were part of the RFP that we will be referring to in a separate notebook for each of you. There is a list of those contents in the notebook.

You will notice that there is no "proposal" per se by either developer. That is because ACHC has laid out exactly how the site will be developed and has provided the construction drawings and engineering plans. That leaves little room for any diversion and indeed one developer accepts all the requirements as his proposal and the other adds hardwood floors but otherwise agrees to accept all the requirements. So if you are looking for a proposal, you will not find one. You will find predominantly filled out forms that were required submissions. Do not struggle to make sense of it as a proposal in the classic sense of the word. The main area of interest for us is the financial information they provide. The Pro Forma is a key piece to the whole project as it is needed to calculate the need for a subsidy to the development, if required. The Price Summary Form is where this calculation becomes a hard figure.

When we meet on Thursday, I will provide more information on the public subsidies and gift funds used to date on Willow-Central and also give you a score sheet and the selection criteria (which are also in the RFP). We will score each developer after interviews and then pool our results but it must all be in writing.

So far, I have not heard about schedules for the interview meetings. I am trying for Tuesday April 17 at 7:30 as a first choice.

See you Thursday, April 12 at 8:15AM in room 121.

X-Originating-IP: [209.225.8.184]
From: "Mark O'Hagan" <markohagan@mcoassociates.com>
To: "'Nancy Tavernier'" <ntavern@comcast.net>
Subject: RE: Berlin addresses
Date: Fri, 13 Apr 2007 12:17:25 -0400
X-Mailer: Microsoft Office Outlook 11
Thread-Index: Acd9II3VX39VT5XBR7i/sERaLRPj8wAwJKcg
X-Chzlr: 0

Hi Nancy:

Maureen was going to deliver the Bank letter to you this AM. I will also bring a copy to the meeting on Tuesday.

In terms of locations to see Rhodes Construction work I can offer the following:

1. We have just started building a 40 unit development in Northborough which you see. It is called "Church Street Village" and is located just off the Church Street exit of Route 290 towards Worcester. Take Left off the ramp and you will project on your left about 3/4 of a mile down (towards Northborough).
2. For current or finished neighborhoods you could go to Collins Road (Trout Brook Farm) in Berlin which is off Lancaster Road in Berlin.
3. Estabrook Road is off of Sawyer Hill Road. From Route 62/495. Take LEFT up Sawyer Hill Road, past a beautiful horse farm and residence at top. Estabrook is about another mile or so on the Left. Nice property, still a few houses to be complete but nearly done. Mark Rhodes actually lives there - large white house on hill with widow walk. Very pretty home.

Hope that helps - I can send you to others if needed but think these are representative of his expensive products as well as the more modest town homes in Northborough.

Have a great weekend.

MCO

Mark C. O'Hagan
MCO & Associates, Inc
P.O. Box 372
Harvard, MA 01451
978-456-8388

-----Original Message-----

From: Nancy Tavernier [<mailto:ntavern@comcast.net>]
Sent: Thursday, April 12, 2007 12:48 PM
To: markohagan@mcoassociates.com
Subject: Berlin addresses

Hi Mark,

The selection committee would like to drive by some of the homes constructed by Mark Rhodes. Could you give me a specific address for Estabrook Woods and Trout Brook Farms so that we could locate them and drive by? Any other examples you could provide would be fine also. Thanks.

Nancy

Interview Format

1. Introductions
2. Brief presentation from each developer

Mark O'Hagan	7:45PM-8:15PM
Stephan Marsh	8:45PM-9:15PM

Follow format of Competitive Evaluation Criteria in RFP

Review Pro Forma and Price Summary Form

Review list of submissions

3. Questions from Committee

see list of possible questions

4. Other comments and questions

Acton Community Housing Corporation
Willow-Central Selection Committee
April 17, 2007

Interview Questions to consider

1. Describe what you did for due diligence in assessing your proposal. What concerns or risks, if any, did you identify in your assessment?
2. How did you determine your construction cost price?
3. Explain your changes requested in the Land Disposition Agreement
4. Sidewalk fund, ACHC will be paying the Town the \$5000. No need to make adjustment, it can just be added to your profit.
5. Explain whether you will form a separate company, LLC, LDO or what.
6. Who will do the construction? Who do you hire for workers?
7. Do you intend to have financing in place prior to Closing? How long do you think it will take?
8. Is there any reason that DHCD might not approve you as the selected developer?

Developer submissions

F. Document Submission Requirements (as revised 3/7/07)

The following documents (fully completed and executed as applicable) must accompany the proposal. Failure to provide any of the required documents may result in the determination that the Offer is non-responsive. Numbered tabs should match numbered items in the following table, and should appear in the order given.

The RFP Response should include a cover Letter with the following tabbed exhibits:

Tab	Contents	Mark	Steve	Comments
1.	Proposal Form (Exhibit P)	Yes Corporation	Yes Corporation	Mark: form single use entity Steve: form LLD,LDO??
2.	Price Summary Form (Exhibit Q) along with a completed Pro Forma (a detailed breakdown of projected revenues and costs on the form provided as Exhibit R) (both in an sealed envelope labeled as set forth above)	\$0 land \$0 subsidy \$100,000 conditional grant	\$1 land \$318,560 subsidy	Mark:corrected Pro Forma math error
3.	Certificate of Non-Collusion (Exhibit S)	Yes	Not signed?	
4.	Disclosure of Beneficial Interest Form as required by M.G.L. c.7, ' 40J (Exhibit T)	Yes	Not signed?	
5.	Non-Delinquency Statement required by M.G.L. c. 60, ' 77B (Exhibit U)	Yes	Yes	
6.	Commitment for payment in	Yes	Yes	

	lieu of taxes calculated in accordance with M.G.L. c. 44, ' 63A (Exhibit V)			
7.	Acknowledgment that the sale is not exempt from the Title 5 inspection requirements of 310 CMR 15.301(f), if and as applicable (Exhibit W)	Yes	Yes	
8.	Certification as to Payment of Taxes (Exhibit X)	Yes	Yes	
9.	Copy of the Disposition Agreement indicating changes, if any, requested by the RFP Respondent (Exhibit M)	Section 17 deletion on specific performance?	Sections circled?	Mark – delete specific performance section?? Steve – concerns need explanation?
10.	Developer's Profile - - a brief summary of the Developer's organization and experience, resumes of principals, a list of 3 client/customer references, a letter or letters of reference from prior or prospective lender(s) attesting to the Developer's creditworthiness, and a disclosure of any liens, foreclosures, bankruptcies, or other actions that would interfere with construction financing or delay the timely progress of the project.	Yes Yes Yes Yes	No developer, only GC See tab 11 below, information for general contractor	Steve – No developer information, only general contractor??
11.	General Contractor's Profile - - a brief summary of the contractor's organization and experience, resumes of principals, a list of 3	Yes Yes	Yes Yes	

	<p>client/customer references, a letter or letters of reference from prior or prospective lender(s) attesting to the General Contractor's creditworthiness, and a disclosure of any liens, foreclosures, bankruptcies, or other actions that would interfere with construction financing or delay the timely progress of the project. Names and similar summaries of all subcontractors are also required.</p>	<p>No lender letter for GC</p> <p>No???</p>	<p>Yes</p> <p>No lender letter, requested??</p>	
12.	Letters of Reference -- one letter of reference each for the Developer, and the General Contractor from a client or customer	Yes	Yes	
13.	Technical Proposal - detailed specifications of the proposed design, building materials, house components, unit amenities, and other planned improvements to the Property as part of the Work must be provided	Yes Exhibit O Plans and Specs acceptable as technical proposal	Yes Accept all plans and specs plus HW floors on first level of all units	
14.	Critical path time schedule conforming to Section VII(d) above	60 days to closing, 180 days from closing to occupancy 240 days total	30 days after financing, start 6-7 months	Mark -- 8 months total Steve -- 6-7 months total

15.	Corporate Resolution, if a Corporation (Exhibit Y)	Yes	Yes	
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Updated originals of forms 4-8 shall be executed and delivered by the RFP Respondent at Closing and as a pre-condition thereto.

???? Anything with ?? is meant to indicate need for question of candidates.



April 11, 2007

Acton Community Housing Corporation
Attn: Nancy Tavernier, Chairman
Acton Town Hall
472 Main Street
Acton, MA 01720

RE: Willow/Central Affordable Housing
MCO & Associates, Inc.

Dear Ms. Tavernier:

I have had the opportunity to speak with Mark O'Hagan and review the pro forma financial details of the "Willow/Central" project. I am writing to advise your Board we have interest in providing funding for the project in conjunction with MCO & Associates, Inc.

We are excited at the prospect of supporting such a positive project and believe the Town and your Board should be commended for creating affordable housing units. We also feel that Mr. O'Hagan has the necessary experience and financial resources to complete this project. If Mr. O'Hagan is designated as the developer we can complete our review and work towards providing a loan commitment for the project.

If you have any further questions, please contact me at 978-318-1234.

Sincerely,

Richard Cole
Construction Lending Officer
Middlesex Savings Bank

Willow-Central Project Costs
Public Subsidies and Housing Gift Funds

Full Cost

April 17, 2007

Land Acquisition payment to the Town from ACHC	\$202,548.32
New View Housing Fund	\$ 50,000.00
CPA Willow-Central Fund	\$152,548.32

Comp Permit expenses	\$ 1,187.56
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RFP expenses	\$ 761.72
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Priority Development Funds (DHCD & MassHousing)	\$ 25,000.00
Engineering services	\$15,000
Architectural services	\$5000
Legal expenses	\$5000

Town Counsel (paid by Town)	\$ 20,000.00
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TOTAL as of 4/17/07	\$249,497.60
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Subsidy per unit (3)	\$83,165.87
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Total subsidy per unit

Mark O'Hagan proposal (\$0)	\$ 83,165.87
Steve Marsh proposal (\$318,559)	\$189,352.20

Willow-Central Project Costs
Net Public Subsidies and Housing Gift Funds
April 17, 2007

Land Acquisition payment to the Town from ACHC		\$202,548.32
New View Housing Fund	\$ 50,000.00	
CPA Willow-Central Fund	\$152,548.32	
Comp Permit expenses		\$ 1,187.56
RFP expenses		\$ 761.72
Priority Development Funds (DHCD & MassHousing)		\$ 25,000.00
Engineering services	\$15,000	
Architectural services	\$5000	
Legal expenses	\$5000	
Town Counsel (paid by Town)		\$ 20,000.00
TOTAL as of 4/17/07		\$249,497.60
Minus contribution to Town		-202,548.32
Net public subsidy		\$ 46,949.28
Subsidy per unit (3)	\$15,649.76	
Total subsidy per unit		
Mark O'Hagan proposal (\$0)	\$ 15,649.76	
Steve Marsh proposal (\$318,559)	\$121,836.09	

final

WILLOW-CENTRAL RFP
Evaluation of Proposals
April 2007

Stephan Marsh Westchester Company

EVALUATION CRITERIA	HIGHLY ADVANTAGEOUS	ADVANTAGEOUS	UNACCEPTABLE	COMMENTS
Affordability		✓✓✓✓		
Financial Capacity		✓✓✓✓		
Project Team	✓	✓✓✓		
Feasibility of Proposed Project		✓✓✓✓		
Quality of Design and Construction	✓✓✓	✓		
Proposed Development schedule	✓✓✓	✓		
Proposed Price/Subsidy		✓✓✓	✓	
Changes to Disposition Agreement	✓	✓✓✓		
TOTAL	8	23	1	

Nancy E. Zaverucha 4/17/07

WILLOW-CENTRAL RFP
Evaluation of Proposals
April 2007

Final

Mark O'Hagan **MCO Associates**

EVALUATION CRITERIA	HIGHLY ADVANTAGEOUS	ADVANTAGEOUS	UNACCEPTABLE	COMMENTS
Affordability		✓✓✓✓		
Financial Capacity	✓✓	✓✓		
Project Team	✓✓✓	✓		
Feasibility of Proposed Project		✓✓✓✓		
Quality of Design and Construction	✓	✓✓✓		
Proposed Development schedule	✓✓✓✓			
Proposed Price/Subsidy	✓✓	✓✓		
Changes to Disposition Agreement	✓	✓✓✓		
TOTAL	13	19		

Nancy E. Zaverucha 4/17/07

WILLOW-CENTRAL RFP

Evaluation of Proposals

April 2007

Stephan Marsh

Westchester Co.

EVALUATION CRITERIA	HIGHLY ADVANTAGEOUS	ADVANTAGEOUS	UNACCEPTABLE	COMMENTS
Affordability		✓		
Financial Capacity		✓		bring letter
Project Team		✓		
Feasibility of Proposed Project		✓		fixed
Quality of Design and Construction	✓			needs to be negotiated downward - amenities too high
Proposed Development schedule	✓			
Proposed Price/Subsidy		✓		
Changes to Disposition Agreement		✓		none verbal
TOTAL				

F.A. Chaffin
04/17/07

WILLOW-CENTRAL RFP
Evaluation of Proposals
April 2007

Mark O'Hagan MCO Associates

EVALUATION CRITERIA	HIGHLY ADVANTAGEOUS	ADVANTAGEOUS	UNACCEPTABLE	COMMENTS
Affordability		✓		
Financial Capacity	✓	✓		<i>better</i>
Project Team	✓			
Feasibility of Proposed Project		✓		<i>fixed</i>
Quality of Design and Construction		✓		
Proposed Development schedule	✓			
Proposed Price/Subsidy		✓		
Changes to Disposition Agreement	⊗ →	✓		<i>none</i> <u>verbal</u>
TOTAL				

P.A. Clifford
04/17/07

WILLOW-CENTRAL RFP

Evaluation of Proposals

April 2007

Mark O'Hagan

MCO Associates

EVALUATION CRITERIA	HIGHLY ADVANTAGEOUS	ADVANTAGEOUS	UNACCEPTABLE	COMMENTS
Affordability		✓		
Financial Capacity	✓			
Project Team	✓			
Feasibility of Proposed Project	W	✓		
Quality of Design and Construction	✓			Observed other projects. Currently working a very difficult site w/ lot set ledge. Good
Proposed Development schedule	✓			design features on townhouses Quality products used - ie Tyvek for vapor barrier.
Proposed Price/Subsidy		✓		
Changes to Disposition Agreement		✓		I understand the market issue + think it is reasonable to re-visit
TOTAL	5	3		

Lauren A. Rosenberg 4/17/07

WILLOW-CENTRAL RFP
Evaluation of Proposals
April 2007

Stephan Marsh **Westchester Co.**

EVALUATION CRITERIA	HIGHLY ADVANTAGEOUS	ADVANTAGEOUS	UNACCEPTABLE	COMMENTS
Affordability		✓		
Financial Capacity		✓		
Project Team		✓		
Feasibility of Proposed Project		✓		
Quality of Design and Construction	✓			I like the Energy Star efficiency. Wood floors good, countertops - granite? Not sure if necessary, but is nice + durable.
Proposed Development schedule	✓			
Proposed Price/Subsidy		✓		
Changes to Disposition Agreement		✓		
TOTAL	2	6		

Lauren A. Rovinsky 4/17/07

WILLOW-CENTRAL RFP
Evaluation of Proposals
April 2007

Mark O'Hagan MCO Associates

By Ryan Betz
By Betty

4/17/07

EVALUATION CRITERIA	HIGHLY ADVANTAGEOUS	ADVANTAGEOUS	UNACCEPTABLE	COMMENTS
Affordability		✓		
Financial Capacity		✓		
Project Team		✓		
Feasibility of Proposed Project		✓		
Quality of Design and Construction		✓		
Proposed Development schedule	✓			
Proposed Price/Subsidy	✓			
Changes to Disposition Agreement		✓		
TOTAL	2	6		

WILLOW-CENTRAL RFP
Evaluation of Proposals
April 2007

By Ryan Bettez
By J. Bettez 4/17/07

Stephan Marsh Westchester Co.

EVALUATION CRITERIA	HIGHLY ADVANTAGEOUS	ADVANTAGEOUS	UNACCEPTABLE	COMMENTS
Affordability		✓		
Financial Capacity		✓		
Project Team		✓		
Feasibility of Proposed Project		✓		
Quality of Design and Construction		✓		
Proposed Development schedule		✓		
Proposed Price/Subsidy			✓	
Changes to Disposition Agreement		✓		
TOTAL		7	1	

WILLOW-CENTRAL RFP
Evaluation of Proposals
April 2007

Stephan Marsh Westchester Co.

EVALUATION CRITERIA	HIGHLY ADVANTAGEOUS	ADVANTAGEOUS	UNACCEPTABLE	COMMENTS
Affordability		✓		
Financial Capacity		✓		
Project Team	✓ ?	?		
Feasibility of Proposed Project		✓		
Quality of Design and Construction	✓			
Proposed Development schedule	✓			
Proposed Price/Subsidy		✓ ?	?	
Changes to Disposition Agreement	✓			
TOTAL	4	4	0	

Nancy E. Zavelkner 4/17/07

WILLOW-CENTRAL RFP
Evaluation of Proposals
April 2007

Mark O'Hagan MCO Associates

EVALUATION CRITERIA	HIGHLY ADVANTAGEOUS	ADVANTAGEOUS	UNACCEPTABLE	COMMENTS
Affordability		✓		
Financial Capacity	✓			
Project Team	✓			
Feasibility of Proposed Project		✓		
Quality of Design and Construction		✓		
Proposed Development schedule	✓			
Proposed Price/Subsidy	✓			
Changes to Disposition Agreement	✓			
TOTAL	5	3	0	

Nancy E. Zavelle 4/19/07

C. Evaluation of Proposals

ACHC will review all proposals received by the filing deadline in accordance with the Comparative Evaluation Criteria in Appendix I and the following procedure:

- Proposals will be evaluated and rated by an ACHC Selection Committee according to the Comparative Evaluation Criteria set forth in this Appendix I to the RFP.
- The Committee will make its recommendations to the ACHC Board.
- The ACHC Board will select the most advantageous proposal from the responsible and responsive RFP Respondents, taking into consideration the Comparative Evaluation Criteria, the Committee's recommendations, and the Board's own judgment as to which RFP Respondent best meets the Comparative Evaluation Criteria.
- ACHC will notify all RFP Respondents in writing of the decision.
- Under ACHC's enabling legislation, the actual disposition is subject to the approval of the Acton Board of Selectmen.

ACHC reserves the right to reject any and all proposals if ACHC determines that it is in its best interest to do so. ACHC also reserves the right to waive any informalities in the proposal process and to accept the proposal(s) deemed to be in the best interest of ACHC.

ACHC reserves the right to interview or to seek additional information from any RFP Respondent after the opening of Proposals but before entering into a Disposition Agreement, to reject any proposal if ACHC deems it to be in the best interests of ACHC, and to award the Disposition Agreement to the next qualified applicant.

1. Competitive Evaluation Criteria

Each proposal meeting the minimum threshold criteria will then be judged on the following additional competitive evaluation criteria:

a. Affordability.

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators exceeds the Minimum Affordability Commitment by providing a greater percentage (*i.e.* 100%) or a greater mix (*i.e.* low and very low income) of affordable units. Given the importance of this criterion, as between two competing "Highly Advantageous" proposals, preference as to the

affordability criterion will be given to the proposal providing the greater percentage and greater mix of affordable units.

- An Advantageous rating will be given to a proposal that in the judgment of the evaluators meets the Minimum Affordability Commitment.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators fails to meet the Minimum Affordability Commitment.

b. **Financial Capacity.**

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators identifies a Project Team with exceptional financial capacity to undertake the Project proven by prior experience financing real estate development, including securing any necessary interim financing, ability to provide any equity contribution projected in the Sources and Uses Budget, and ability to secure financing as evidenced by letter(s) from prospective lender(s) and other supporting material.
- An Advantageous rating will be given to a proposal that in the judgment of the evaluators identifies a Project Team with reasonable financial capacity to undertake the Project.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators fails to identify a Project Team with reasonable financial capacity to undertake the Project.

c. **Project Team.**

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators identifies a Project Team capable of completing the Project successfully and in an expedited manner as evidence by such factors as (a) extensive experience with residential projects, (b) an exceptional record of designing and constructing residential projects ahead of schedule, within budget and with minimal changes during construction, and (c) the resumes and references of principals and senior staff assigned to the Project.
- An Advantageous rating will be given to a proposal that in the judgment of the evaluators identifies a Project Team capable of completing the Project acceptably and on time as evidence by such factors as (a) suitable experience with residential projects, (b) a suitable record of designing and constructing residential projects on time and within budget, and (c) the resumes and references of principals and senior staff assigned to the Project.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators fails to identify a Project Team capable of completing the Project acceptably and on time.

d. **Feasibility of Proposed Project.**

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators is highly feasible based on an analysis of the development budget, the demonstrated ability of the Project Team to resolve environmental and permitting issues as they may arise, the likely acceptability of designs by regulators, lenders and funders, the likelihood of obtaining proposed financing for construction and soft costs as estimated, and the reasonableness of the budget.
- An Advantageous rating will be given to a proposal that in the judgment of the evaluators is feasible based on an analysis of these factors.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators is not feasible based on an analysis of these factors.

e. **Quality of Design and Construction.**

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators presents qualitative improvement to the proposed design; presents superior merit in terms of architectural features, unit designs and amenities, and the quality of proposed construction; and observes careful site planning.
- An Advantageous rating will be given to a proposal that in the judgment of the evaluators complies with the design requirements of the RFP and presents an acceptable quality of building and unit design and construction.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators presents an unacceptable quality of building and unit design and construction.

f. **Proposed project development schedule.**

A Project with a shorter but achievable development schedule will receive a more advantageous rating on this criterion than a Project with a longer development schedule or an impractical development schedule.

g. **Proposed Price/Subsidy.**

Because the sale price of all three units will be restricted under the RFP, the successful RFP Respondent's potential revenue from the project is, by definition, limited. Depending on the development costs, there is a potential for the RFP Respondent's costs to exceed its revenue. To help bridge the gap and to afford a reasonable development profit, there is no minimum bid price for the Property. In addition, subsidies may be available for this project under the Town of Acton's Community Preservation Act ("CPA") Fund or through donations and other governmental programs. In the price proposal, the RFP Respondent must specify its proposed purchase price offered for the Property and any proposed grants the RFP Respondent will request from ACHC and/or the Town of Acton (such as Community Preservation Act funds). In this way, ACHC will be able to compare each offer based on the net financial gain or net financial subsidy.

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators presents a positive financial gain to ACHC and the Town of Acton, without materially sacrificing on the quality of the Project, measured in terms of (a) the proposed purchase price offered for the property, minus (b) any proposed

subsidies to be requested by the RFP Respondent from ACHC and/or the Town of Acton (such as Community Preservation Act funds). With respect to this criterion, as between two Highly Advantageous projects, the project with the higher positive financial gain (if any) to ACHC and the Town, without materially sacrificing on the quality of the Project, will be considered more favorably.

- An Advantageous rating will be given to a proposal that in the judgment of the evaluators presents modest need for a net subsidy from ACHC and/or the Town of Acton, without materially sacrificing on the quality of the Project, measured in terms of (a) the proposed price offered for the property, minus (b) any proposed subsidies to be requested by the RFP Respondent from ACHC and/or the Town of Acton (such as Community Preservation Act funds). With respect to this criterion, as between two Advantageous projects, the project with the smaller net subsidy from ACHC and/or the Town, without materially sacrificing on the quality of the Project, will be considered more favorably.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators presents the need for an unacceptable net subsidy from ACHC and/or the Town of Acton.

h. **Requested Changes to Disposition Agreement.**

There will be an evaluation of changes to the Disposition Agreement requested by the RFP Respondent. RFP Respondents requesting fewer substantive changes to the Disposition Agreement will receive a more advantageous rating on this criterion.

i. **Overall Score and Ranking**

After evaluating a proposal on the foregoing factors, the evaluators will provide an overall score and ranking for the proposal as compared to other proposals. For example, a proposal which achieves “Highly Advantageous” and/or “Advantageous” rankings in several categories will not necessarily be disqualified simply because it received an “Unacceptable” ranking in one or more other categories if, in the judgment of the evaluators, the proposal on the whole is “Advantageous” or “Highly Advantageous” to the Town. Any notice of award, however, will be contingent upon the project proponent curing any “Unacceptable” criterion ranking prior to the execution of the Disposition Agreement.

Acton Community Housing Corporation

Nancy Tavernier, Chairman

TOWN OF ACTON

Acton Town Hall

472 Main Street

Acton, Massachusetts, 01720

Telephone (978) 263-9611

achc@acton-ma.gov

CERTIFICATE OF VOTE

RE: Awarding Authority: Acton Community Housing Corporation
 Request for Proposals: Disposition of Municipal Real Estate
 Purpose: Affordable Housing
 Property: 28 Willow Street and 214 Central Street, Acton

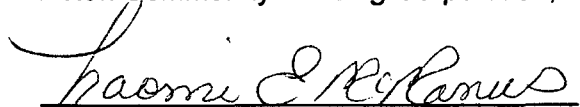
At a duly noticed meeting on April 26, 2007, upon motion duly seconded, the Board of Directors of the Acton Community Housing Corporation ("ACHC") voted to award to MCO & Associates, Inc. ("MCO") the above-captioned Request for Proposals for the Disposition of Municipal Real Estate for Affordable Housing Purposes ("RFP"). The RFP was issued on February 14, 2007. MCO's response was submitted on March 19, 2007, and corrected on April 5, 2007. This vote to award was made subject to and conditional upon all terms and conditions of the RFP and upon the following:

1. The award of this contract is subject to Chapter 143 of the Acts of 1996, M.G.L. c. 30B, § 16, and Article 29 adopted at the Acton Annual Town Meeting of April 4, 2006.
2. ACHC's Disposition of the Property is subject to approval of the Acton Board of Selectmen under § 2(d) of Chapter 143 of the Acts of 1996.
3. MCO & Associates, Inc, shall execute and deliver to ACHC both originals of the Disposition Agreement attached hereto within thirty (30) days of the date of this notice of award (or within any extension to which ACHC may agree in writing).

And further, ACHC's Board voted to authorize ACHC's Chair Nancy Tavernier to execute all documents and take all actions necessary to (a) acquire the Property at 28 Willow Street and 214 Central Street, Acton from the Town of Acton, (b) acquire a perpetual Access & Utility Easement from Flannery substantially in accordance with the Easement dated April 3, 2006 and (c) re-convey that Property and that Easement to MCO in accordance with this vote, the attached Disposition Agreement and the RFP.

The foregoing is a true and accurate record of the Board's vote on April 26, 2007.

Acton Community Housing Corporation,


Clerk

Acton Community Housing Corporation

Nancy Tavernier, Chairman

TOWN OF ACTON

Acton Town Hall

472 Main Street

Acton, Massachusetts, 01720

Telephone (978) 263-9611

achc@acton-ma.gov

April 26, 2007

Certified Mail - RRR

Mark C. O'Hagan, President

MCO & Associates, Inc,

206 Ayer Road, Suite 5

Harvard, MA 01451

RE:	Action:	Award Letter
	Awarding Authority:	Acton Community Housing Corporation
	Request for Proposals:	Disposition of Municipal Real Estate
	Purpose:	Affordable Housing
	Property:	28 Willow Street and 214 Central Street, Acton

Dear Mark:

On behalf of Acton Community Housing Corporation ("ACHC"), I am pleased to inform you that ACHC's Board has voted to award MCO & Associates, Inc, the above-captioned Request for Proposals for the Disposition of Municipal Real Estate for Affordable Housing Purposes ("RFP"). The RFP was issued on February 14, 2007. Your response was submitted on March 19, 2007, and corrected on April 5, 2007.

This award letter is made subject to and conditional upon all terms and conditions of the RFP and upon the following:

1. The award of this contract is subject to Chapter 143 of the Acts of 1996, M.G.L. c. 30B, § 16, and Article 29 adopted at the Acton Annual Town Meeting of April 4, 2006.
2. ACHC's Disposition of the Property is subject to approval of the Acton Board of Selectmen under § 2(d) of Chapter 143 of the Acts of 1996.
3. MCO & Associates, Inc, shall execute and deliver to ACHC both originals of the Disposition Agreement enclosed herewith within thirty (30) days of the date of this notice of award (or within any extension to which ACHC may agree in writing).

For your convenience, I have enclosed a redlined copy of the Disposition Agreement showing the changes made to the exhibit attached to the RFP. These

changes incorporate the terms of your proposal, including the requested change to Section 17(b) of the Disposition Agreement.

ACHC is delighted to move forward with you on this very important project and looks forward to working with you to make this housing a reality.

Sincerely

A handwritten signature in cursive script that reads "Nancy Tavernier".

Nancy Tavernier
Chair

cc: Don P. Johnson, Town Manager
Stephen D. Anderson, Town Counsel

To: Mark O'Hagan
From: Nancy Tavernier <ntavern@comcast.net>
Subject: Disclosure
Cc:
Bcc:
Attached: C:\Documents and Settings\Nancy Tavernier\Desktop\attachments\19.url;

Hi Mark,

Attached please find a form for disclosure that needs to be filed with ACHC. You can bring it with you next Tuesday. Someone at Town Hall raised the issue due to the fact that we have hired Maureen and are in the process of reviewing a proposal from someone (you) who currently has a financial interest with ACHC (Maureen's contract).

Because ACHC members are considered special municipal employees, anyone we hire is also considered a municipal employee. That is what triggered the law. In this case because MCO Housing Services is a division of MCO & Associates Inc., you are the actual employee and therefore the potential conflict of interest rests with you. Here is the reference to the law:

Chapter 268A, Section 19 provides that:

Section 19. (a) Except as permitted by paragraph (b), a municipal employee who participates as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

(b) It shall not be a violation of this section (1) if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee, or (2) if, in the case of an elected municipal official making demand bank deposits of municipal funds, said official first files, with the clerk of the city or town, a statement making full disclosure of such financial interest, or (3) if the particular matter involves a determination of general policy and the interest of the municipal employee or members of his immediate family is shared with a substantial segment of the population of the municipality.

Assuming you do not want to go to jail for 2 years or pay a \$3000 fine ☺ , there is simple remedy for this issue. You need to fill out the Ethics Commission form attached and also found at this link:

<http://www.mass.gov/ethics/19.pdf>

**DISCLOSURE OF FINANCIAL INTEREST BY MUNICIPAL EMPLOYEE AND
DETERMINATION BY APPOINTING AUTHORITY
AS REQUIRED BY G. L.c. .268A, §19**

Here is my suggestion for information for you to provide:

1. Name: Mark O'Hagan
2. Title President
3. Agency MCO & Associates, Inc.
4. Municipality Acton

- 5. Office Phone: yours
- 6. Particular matter involved

I have submitted a proposal in response to a Request For Proposals for the Disposition of Real Estate for Affordable Housing Purposes to the Acton Community Housing Corporation (ACHC), Acton Town Hall. My sister, Maureen O'Hagan, is currently under contract to the Acton Community Housing Corporation to prepare a Ready Buyer List and related tasks for a Condo Buydown Program, unrelated to this RFP. Because the ACHC is a municipal agency, she is considered a municipal employee. She is employed by MCO Housing Services, a division of MCO & Associates Inc. I am President of MCO & Associates and the Principal of MCO Housing Services and therefore would be the municipal employee who needs to advise the ACHC of this disclosure.

- 7. Financial interest involved

My sister Maureen O'Hagan is under contract to the ACHC for a flat fee of \$5835. Because I am the Principal of MCO Housing Services, I will benefit financially from that contract and wish to disclose this financial interest to the ACHC, the appointing authority, during the negotiations for my Proposal for the Disposition of Real Estate for Affordable Housing Purposes.

I think that is all that is needed but you can word it any way you want. It only comes to ACHC for our approval which would come on April 26.

Sorry for all the bureaucratic nonsense but it is a simple enough problem to solve. Have a good weekend.

Nancy

**DISCLOSURE OF FINANCIAL INTEREST BY MUNICIPAL EMPLOYEE AND
DETERMINATION BY APPOINTING AUTHORITY
AS REQUIRED BY G. L.c. .268A, §19**

DISCLOSURE

To obtain an exemption pursuant to G.L. c. 268A, §19, municipal employees must submit a disclosure to their appointing official of the nature and circumstances of the particular matter and the financial interest.

Name:	Mark
Title or Position:	President MCO
Agency/Department:	MCO + Assoc, MCO Housing
Municipality:	Acton
Office Phone:	
Particular Matter Involved (Attach additional pages if necessary):	
Financial Interest Involved (Attach additional pages if necessary):	
Employee Signature:	
Date:	

DETERMINATION

As appointing official, as required by G.L. c. 268A, §19(b)(1), I have reviewed the matter and the financial interest described above and have determined that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.

Name and Title of Appointing Authority:	
Signature of Appointing Authority:	
Date:	
Comments (Attach additional pages if necessary):	


Attach additional pages if necessary.

DISCLOSURE OF FINANCIAL INTEREST BY MUNICIPAL EMPLOYEE AND DETERMINATION BY APPOINTING AUTHORITY

AS REQUIRED BY G. L.c. .268A, §19

DISCLOSURE

To obtain an exemption pursuant to G.L. c. 268A, §19, municipal employees must submit a disclosure to their appointing official of the nature and circumstances of the particular matter and the financial interest.

Name:	Mark C. O'Hagan
Title or Position:	President
Agency/Department:	MCO & Associates, Inc.
Municipality:	Acton
Office Phone:	978-456-8986
Particular Matter Involved (Attach additional pages if necessary):	I have submitted a proposal in response to a Request For Proposals for the Disposition of Real Estate for Affordable Housing Purposes to the Acton Community Housing Corporation (ACHC), Acton Town Hall. My sister, Maureen O'Hagan, is currently under contract to the Acton Community Housing Corporation to prepare a Ready Buyer List and related tasks for a Condo Buydown Program, unrelated to this RFP. Because the ACHC is a municipal agency, she is considered a municipal employee. She is employed by MCO Housing Services, a division of MCO & Associates Inc. Because I am President of MCO & Associates and the Principal of MCO Housing Services I would be the municipal employee who needs to advise the ACHC of this disclosure.
Financial Interest Involved (Attach additional pages if necessary):	My sister Maureen O'Hagan is under contract to the ACHC for a flat fee of \$5835. Because I am the Principal of MCO Housing Services, I will benefit financially from that contract and wish to disclose this financial interest to the ACHC, the appointing authority, during the negotiations for my Proposal for the Disposition of Real Estate for Affordable Housing Purposes called Willow-Central Residences.
Employee Signature:	 President MCO ASSOCIATES, INC.
Date:	April 17, 2007

DETERMINATION

As appointing official, as required by G.L. c. 268A, §19(b)(1), I have reviewed the matter and the financial interest described above and have determined that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.

Name and Title of Appointing Authority:	
Signature of Appointing Authority:	
Date:	
Comments (Attach additional pages if necessary):	

Attach additional pages if necessary.

Acton Community Housing Corporation
Acton Town Hall, room 126, 7:30PM
Willow-Central Selection Committee
Minutes 4/17/07

Members Present: Nancy Tavernier, Pat Clifford, Lauren Rosenzweig, Ryan Bettez

Public Present: Belle Choate

Nancy called the meeting to order at 7:35PM

I. Minutes of 4/12/07 were approved as amended.

II. Format discussion

Nancy reviewed the interview format that would be used for the 2 developers.

1. Each will be asked to give a brief presentation using the Competitive Evaluation Criteria as an outline.
2. The Pro Forma, Price Summary Form, and List of Submissions would be reviewed and questions asked.
3. A chart was prepared of the submissions to highlight any areas that needed to be questioned.
4. Questions from the committee members and the developer

Scoring sheets for each candidate were given to members to fill out individually without discussion during and after the interview. Each criteria will be scored as: Highly Advantageous, Advantageous, or Unacceptable.

III. Interview #1 Mark O'Hagan of MCO & Associates, Inc.

Mark highlighted his extensive 40B experience. He is currently involved in seven 40B projects in one capacity or another with a total value of \$100 Million. Mark normally uses the MassHousing program but is familiar and has worked with the DHCD LIP program. A division of MCO & Associates is MCO Housing Services where all the lottery tasks are done by Mark's sister Maureen and others. They have a data bank of over 4200 interested homebuyers and are experienced lottery administrators with a good track record in getting DHCD approval for their marketing plans.

Mark provided a lender letter from the Middlesex Savings Bank and feels he can get a mortgage within 30 days if awarded the project and will have it in hand before the Closing. Due to the administrative process time such as needing DHCD approvals for the lottery plan and regulatory documents, the total project time would be 8 months, starting from the award. The actual construction would only take 3-4 months. He would be ready to start immediately.

Mark only has one change to the Disposition agreement, the deletion of the Performance Section under #17. That was a major concern since he interpreted it to mean that if he did not perform on Willow-Central, he would have to provide 3 units elsewhere in town. He has no other problems with the agreement.

Mark reviewed the Pro Forma numbers and said he was comfortable with them, even though they were tight. It is a modest proposal of small units and he is building a somewhat similar project with larger units in Northboro at \$85-95/sf. He is proposing \$81/sf for Willow-Central for construction costs. He had the site work quoted and the landscaping is only a basic plan, not costly. He has worked with condo documents in similar ownership arrangements and did not think that was a challenge. A reserve fund will be required although he would expect everyone to take care of their own septic system.

Mark's main concern is with the restricted unit to be sold at \$330,000. If that unit was not purchased by the Housing Authority and not bought down by the ACHC, it would have to sell at market with a deed rider for \$330,000. He is finding that buyers are getting picky and he did not think it would sell for any more than \$230,000 with a deed rider or \$280,000 without. That is the reason he asked for a grant of up to \$100,000 as a condition to assure he would get the full \$330,000 no matter what option was chosen. He felt a restriction on income (120% AMI) but not on assets would be the most desirable scenario for marketing the unit. If there is any delay in selling the unit, the project costs go up considerably.

Members scored Mark and had general discussion about some of the information he presented.

IV. Interview #2 Steve Marsh and Jim D'Agostine of Westchester Company

Steve addressed his numbers stating he knew they were higher than O'Hagan's but he was comfortable with them since they were based on actual bids from sub-contractors and a lumber company. He had everything bid out and all bidders will honor their quotes. These were done on March 12 so they are current. Steve checks the references of all subs who work for him, they are for the most part local workers that he knows.

Steve explained he has expertise in permitting especially on challenging sites with environmental issues. He had spoken to MassHousing about the project and they expressed interest in funding a portion of it.

Steve and Jim decided to upgrade the amenities in a number of areas which accounts for some of the higher costs in their proposal. These areas are: hardwood floors on the first floor of each unit, tile baths and kitchens, granite kitchen counters, higher end appliances, central AC and Energy Star appliances. They will use Green construction features which are more expensive. He had the landscaping plan quoted at Weston Nursery and proposes to do extra plantings and sod. Steve is used to building on tight sites and feels this will be no more challenging than any of his others.

They had no concerns about the disposition agreement and no changes were suggested.

He would expect the entire project to take 152 days and would do the lottery concurrently. He would have financing in place in 30 days and before Closing. He explained some of the line items such as engineering and surveying to be used for laying out the houses, the septic system etc. The window specs made the actual product quite

expensive but they respected the integrity of the design and agreed that features such as the windows were appropriate for the neighborhood. They were not concerned about the viability of the restricted unit and felt it could easily sell at a market price of \$330,000 with a deed restriction.

Members scored Steve and Jim and had a general discussion about the information they provided.

V. Committee discussion and recommendation

Committee members discussed each candidate and compared notes and scoring sheets. The discussion focused on the issue of cost and quality. ACHC had expected responders to meet the quality criteria and construction specs but had not expected them to exceed it, especially if it resulted in a more expensive project than anticipated. The consensus was it was in the better interest of ACHC to not build units that could be perceived as upscale. The concept of the design is small starter homes with basic amenities consistent with those expected by first time home buyers. ACHC has put quality into the exterior design and expected the interior to be basic.

Nancy entered each member's scores on a final score sheet and determined that O'Hagan was rated Highly Advantageous in 4 of the categories and Marsh rated Highly Advantageous in 1 category with the remaining 4 categories be tied at Advantageous.

In the end, the choice came down to the Subsidy requested. Mark O'Hagan had requested \$0 subsidies plus a conditional grant of up to \$100,000 for the restricted unit. Steve Marsh requested \$318,559 and proposed paying \$1 for the land. Because the subsidies offered by ACHC are public dollars or gift funds given for a public purpose, we had to carefully weigh the appropriate use of them. It was difficult to judge the cost estimates for each proposal because they were at extreme ends and we had nothing in the middle as a comparable. Because of the added amenities of Marsh, they were not simple apples to apples comparisons.

After going through the evaluation process and scoring each proposal, the selection committee members determined that the proposal that was more affordable from the subsidy perspective was the proposal that was in the best interest of the ACHC and the Town. Pat Clifford moved to recommend to the ACHC, the award be made to Mark O'Hagan. Ryan Bettez seconded the motion. The Vote was 4 Yes, 0 No.

The meeting adjourned at 10:30PM

Respectfully submitted,

Nancy Tavernier

Acton Community Housing Corporation
Acton Town Hall, room 121, 8:15AM
Willow-Central Selection Committee
Minutes 4/12/07

Members Present: Nancy Tavernier, Pat Clifford, Lauren Rosenzweig, Ryan Bettez

Nancy called the meeting to order at 8:15AM

Nancy went over the pertinent RFP materials that need to be reviewed prior to the interviews of the two candidates. Members discussed the following:

- Executive Summary – RFP
- RFP
- Comprehensive Permit
- Land Disposition Agreement
- Construction Specifications
- Drawings of units – exterior
- Site Plan

Members reviewed the two proposals from Mark O'Hagan of MCO & Associates and Stephan Marsh of Westchester Company and determined the proposals were responsive and met the minimum threshold criteria. Members also discussed the Pro Forma and the technical proposals. A list of questions for the developers was generated and members were urged to add more during their review of the documents. Mark O'Hagan's correction in the Pro Forma Sources section was noted. The correction was requested by ACHC at the recommendation of Town Counsel. Obvious math errors are allowed to be corrected under the Procurement Act as long as no other prices are changed .

Members decided to schedule interviews with each responder. Interviews will be held on Tuesday, April 17 at 7:45PM and 8:45PM. Scoring sheets were handed out for each member to use during the interviews. They will be filled out individually and compared at the end of the process for a final determination.

Meeting adjourned 9:30AM

Minutes prepared by Nancy Tavernier

To: kingst435@comcast.net
From: Nancy Tavernier <ntavern@comcast.net>
Subject: Willow-Central
Cc:
Bcc: Ryan Bettez, "Pat Clifford" <forthill@prodigy.net>, "Lauren Rosenzweig" <lsr57@comcast.net>
Attached:

Dear Steve and Jim,

On behalf of the Willow-Central selection committee, I want to thank you for meeting with us last night and giving such an excellent presentation of your proposal. Both the proposals and presentations were completely different from each other, as is the housing experience of both you and Mark. You had obviously done due diligence in preparing the cost figures, planning for the development and assessing the risks. We understood your rationale in upgrading the units with amenities that were not required and appreciate the spirit in which it was offered.

In the end, the choice came down to the Subsidy requested. Because the subsidies offered by ACHC are public dollars or gift funds given for a public purpose, we had to carefully weigh the appropriate use of them. It was very difficult for us to judge the cost estimates for each proposal because they were at extreme ends and we had nothing in the middle as a comparable. Because of the added amenities, they were not simple apples to apples comparisons. After going through the evaluation process and scoring each proposal, the selection committee members voted to recommend to the ACHC that the project be awarded to Mark O'Hagan. We have no reason to believe that ACHC will not accept our recommendation but until they do so on April 26, this notification is preliminary. You will receive a more formal notice after that date.

We know this is a disappointment to you and it was hard for us. We are extremely grateful that you submitted a proposal for Willow-Central. We look forward to a continuing relationship with Westchester Company as you work your way through the Blanchard development. We encourage you to bring forth other ideas for affordable housing in the Town.

Thank you for your support of affordable housing in Acton.

Nancy Tavernier for the Selection Committee

**Construction Costs for Recent Acton 40B's
March 2007**

Development Name	Date	Square Footage	Total Development Cost	Total Development cost/sf	Residential Construction cost	Construction Cost/sf
Blanchard Place	2007	29,444	\$4,329,572*	\$147.04*	\$2,337,000*	\$79.37*
Crossroads	2004	14,666	\$2,702,078	\$184.24	\$1,250,067	\$85.24
Davis Place	2007	16,800	\$3,099,860*	\$184.52*	\$1,662,500*	\$98.96*
Fort Pond Brook	2006	13,376	\$2,168,483	\$162.12	\$986,364	\$73.74
Franklin Place	2005	24,768	\$5,406,870	\$218.30	\$2,906,096	\$117.33
Willow-Central	2008	4048				
Ryan	2007	4048	\$793,024*	\$195.91*	\$385,510*	\$95.23*
Terry Heinlein	2005	4048	?	?	\$478,845*	\$118.29*
Cost estimator	2005	4048	?	?	\$676,830*	\$167.20*
Mark O'Hagan	2007	4133	\$583,148*	\$141.00*	\$330,621*	\$80.00*
Steve Marsh	2007	4058	\$893,600*	\$220.20*	\$622,100*	\$153.00*

*Pre-construction estimate

Acton Community Housing Corporation

Nancy Tavernier, Chairman

TOWN OF ACTON

Acton Town Hall

472 Main Street

Acton, Massachusetts, 01720

Telephone (978) 263-9611

achc@acton-ma.gov

May 1, 2007

Stephan Marsh
Jim D'Agostine
Westchester Company
411 Mass. Ave. Suite 304
Acton, MA 01720

Dear Steve and Jim,

On behalf of the Acton Community Housing Corporation, I want to thank you for submitting a response to our Willow-Central Request for Proposals. The Selection Committee was impressed with your presentation and the due diligence that you performed in preparing the cost figures, planning for the development, and assessing the risks.

After going through the evaluation process and scoring each proposal, the Selection Committee members voted to recommend to the ACHC that the project be awarded to Mark O'Hagan. The ACHC voted to award the project to O'Hagan on April 26.

We are extremely grateful that you submitted a proposal for Willow-Central. We look forward to a continuing relationship with Westchester Company as you work your way through the Blanchard development.

Thank you for your continued support of affordable housing in Acton.

Sincerely,

Nancy E. Tavernier, Chair
ACHC

ACTON COMMUNITY HOUSING CORPORATION

REQUEST FOR PROPOSALS

**Disposition of Municipal Real Estate
For Affordable Housing Purposes**

PROPERTY LOCATED AT

**28 WILLOW STREET AND 212-214 CENTRAL STREET
ACTON, MASSACHUSETTS**

Selection Committee

February 14, 2007

**Acton Community Housing Corporation
Nancy Tavernier, Chairman
Acton Town Hall
472 Main Street
Acton, MA 01720
achc@acton-ma.gov
978-263-9611**

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Request for Proposals (RFP)

**28 Willow Street, 212, and 214 Central Street
Acton, MA**

**Disposition of Municipal Real Estate
For Affordable Housing Purposes**

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A	Article 29 adopted at the 2006 Acton Annual Town Meeting
B	Agreement between the Town and ACHC for acquisition of the Property
C	Approval Not Required Plan dated March 1, 2006, endorsed for the Acton Planning Board on March 22, 2006
D	Memorandum of Agreement dated April 3, 2006, amended on December 14, 2006 for Access & Utility Easement to be granted to ACHC
E	Preliminary Approval of the Project under DHCD's Local Initiative Program
F	Comprehensive Permit for the Project
G	Approved Comprehensive Permit Plans - Stamski and McNary, Inc. dated June 2, 2006, revised 10/10/2006
H	Sewage Disposal Permits for the Project
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J	Landscape Plan and Notes
K	Environmental Report
L	Appraisal Report
M	Purchase and Sale Agreement for the Disposition of the Property
N	Architectural Drawings and Building Elevations for Willow/Central Residences prepared by Mangel Architects, Inc. dated 1/26/07, based on Proposed Schematic Site Plan and Proposed Schematic Elevations prepared by Terrence G. Heinlein AIA Architect dated 8/14/06
O	Construction Specifications
P	Proposal Form
Q	Price Summary Form
R	Pro Forma Form
S	Certificate of Non-Collusion
T	Disclosure of Beneficial Interest Form
U	Non-Delinquency Statement
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W	Acknowledgment that the sale is not exempt from the Title 5 inspection requirements of 310 CMR 15.301(f)
X	Certification as to Payment of Taxes
Y	Corporate Resolution

Town of Acton
Acton Community Housing Corporation

Request for Proposals (RFP)

**Disposition of Municipal Real Estate
For Affordable Housing Purposes
28 Willow Street, 212, and 214 Central Street, Acton MA**

Executive Summary

The Acton Community Housing Corporation ("ACHC") is seeking proposals for the disposition of certain real property at 28 Willow Street, 212, and 214 Central Street and the construction of three units of affordable housing and associated improvements on the property. The ACHC is a quasi-public body under the control of the Acton Board of Selectmen that facilitates affordable housing opportunities in the Town of Acton.

The purpose of this RFP is to select a developer who will acquire, develop, restrict, and market the Property in accordance with the RFP and the Comprehensive Permit. The RFP specifies the process for disposition and restricts the subsequent use of the Property for residential and affordable housing purposes. The Town will convey the property Title to the ACHC. Once the developer is selected, the ACHC will convey the Title to the developer through a Land Disposition Agreement.

Depending on the development costs, there is a potential for the RFP Respondent's costs to exceed its revenue. To help address this issue and to afford a reasonable development profit, there is no minimum bid price for the Property. In addition, subsidies may be available for this project from the ACHC under the Town's Community Preservation Act Fund or through donations and other governmental programs.

The Project site consists of 15,335 square feet of land located at 212, 214 Central Street and 28 Willow Street in Acton. The site presently comprises two separate lots, with one lot containing a single dilapidated structure. This structure will be razed and the two lots combined into a single lot upon which two new residential structures will be built.

ACHC seeks a developer who will build a duplex farmhouse style building on the Central Street side of the parcel and a single family bungalow style building on the Willow Street side. The duplex will contain a 3-BR unit and a 2-BR unit; the bungalow will be a 3-BR unit. Complete architectural drawings are provided by ACHC. The wastewater disposal system has been designed and approved by the Board of Health.

ACHC has a Determination of Site Eligibility and Preliminary Approval of the Project under DHCD's Local Initiative Program and a Comprehensive Permit for the project from the Acton Zoning Board of Appeals. All development and use of the Property shall

conform to the requirements of the LIP Approval and the Comprehensive Permit.

The ownership of the dwellings and the parcel will be in the form of condominiums. Each unit will have an Exclusive Use Area under individual control. There will be some shared common area responsibilities. The condominium units will be sold through a lottery with the exception of the 3-BR duplex unit, which is subject to specific resale requirements in the RFP.

ACHC considers this an ideal site for a small multi-family development. The lot is located within close walking distance to the West Acton Village Center. Infill housing is consistent with the Town's Master Plan and the Planning Board's emphasis on concentrating development within and near the village cores. It also meets many Smart Growth criteria.

We welcome your interest in the Willow-Central Development and look forward to the successful completion of the Acton Community Housing Corporation's first independently sponsored housing proposal.

Request for Proposals (RFP)

Disposition of Municipal Real Estate For Affordable Housing Purposes Acton Community Housing Corporation

A. Introduction

1. Invitation to Bid

The Acton Community Housing Corporation ("ACHC") is seeking proposals for the disposition of certain real property at 28 Willow Street and 214 Central Street, Acton, MA, and the construction of three units of affordable housing and associated improvements on the property. The ACHC is a quasi-public body under the control of the Acton Board of Selectmen that facilitates affordable housing opportunities in the Town of Acton.

The RFP specifies the process for disposition and the restrictions imposed on the subsequent use of the Property for residential and affordable housing purposes. After acquiring the Property, the successful RFP Respondent must:

- construct (within the time specified in the RFP) a duplex farmhouse-style building on the Central Street side of the Property, a single family bungalow-style building on the Willow Street side of the Property, and various other improvements, all in accordance with plans and permits provided by ACHC. (The duplex will contain a 3-bedroom unit and a 2- bedroom unit. The bungalow will contain a 3- bedroom unit.)
- establish a condominium for the units and must market the units promptly upon completion. Two of the units will be restricted as affordable units and sold in a lottery process. The sale price of the third unit will be restricted under the RFP.

The purpose of this RFP is to select a developer/owner who will acquire, develop, restrict, and market the Property in accordance with this RFP.

Depending on the development costs, there is a potential for the RFP Respondent's costs to exceed its revenue. To help address this issue and to afford a reasonable development profit, there is no minimum bid price for the Property. In addition, subsidies may be available for this project from ACHC under the Town's Community Preservation Act Fund or through donations and other governmental programs. To conform to the requirements of the state's Affordable Housing Act, any profits from the Project shall be limited to an overall profit cap of twenty percent (20%) of total development costs of the Project, as accepted by the Department of Housing and Community Development.

2. Site Tour and Briefing

Interested RFP Respondents **are strongly encouraged** to have a representative attend an **information session** at Town Hall followed by an on-site tour at the Property. The information session will be on **March 2, 2007 beginning at 10:00AM in room 126 of Acton Town Hall.**

Advance registration to attend the briefing is encouraged by no later than the close of business on **February 28, 2007.**

To register, please contact Nancy Tavernier (978-263-9611) or Ryan Bettez (617-828-4197), or email achc@acton-ma.gov .

3. Submission Deadline

Sealed proposals will be received at the following address until 12:00 noon, on **Monday, March 19, 2007**, at which time and place they will be publicly opened and read aloud:

Acton Community Housing Corporation
c/o Don P. Johnson, Town Manager
Acton Town Hall
472 Main Street
Acton, Massachusetts 01720

No proposals submitted after this time will be accepted.

RFP Respondents must submit an original and ten (10) copies of the Response in a sealed package, plainly marked RFP - Proposal for Disposition "ACHC Property." Within the sealed package, the original and ten (10) copies of the Price Summary Form must be contained in a separate sealed envelope plainly marked Price Summary Form - RFP Proposal for Disposition "ACHC Property."

RFP Respondents must meet all minimum evaluation criteria, must complete the enclosed proposal form and price summary form, and must include all required documents.

RFP Respondents may correct, modify or withdraw proposals, in writing only, prior to the proposal opening. Corrections or modifications must be in a sealed envelope when submitted.

All proposals must remain in effect for a period of one hundred eighty (180) calendar days from the deadline for submission, or until the disposition has been effectuated, or this Request for Proposals is cancelled, whichever occurs first.

4. **Questions on RFP**

All inquiries concerning this RFP should be in writing submitted by mail, overnight mail, or email (phone calls will not be permitted) to be received by ACHC no later than **March 12, 2007**, to:

Acton Community Housing Corporation
c/o Don P. Johnson, Town Manager
Acton Town Hall
472 Main Street
Acton, Massachusetts 01720

Attention:
Nancy Tavernier or Ryan Bettez
achc@acton-ma.gov

5. **Disclaimers and Caveats**

ACHC makes no representations or warranties, express or implied, as to the accuracy and/or completeness of the information provided in this RFP.

ACHC has attempted in this RFP to be accurate, but ACHC is not responsible for any unintentional errors herein.

All proposals shall be deemed to be public records with the meaning of M.G.L. c. 4, ' 7(26).

The award of this contract is subject to Chapter 143 of the Acts of 1996, M.G.L. c. 30B, ' 16, and Article 29 adopted at the Acton Annual Town Meeting of April 4, 2006 (Exhibit A).

ACHC's Disposition of the Property is subject to approval of ACHC and the Acton Board of Selectmen under § 2(d) of Chapter 143 of the Acts of 1996.

B. Property Description

Set forth below is certain background information about the Property which ACHC has assembled from a variety of sources. ACHC is providing this information in this RFP and its Exhibits and supplements (collectively the "Property Information"). However, ACHC and the Town of Acton make no representation or warranty, express or implied, as to the accuracy and completeness of the Property Information. ACHC and the Town of Acton assume no liability for the accuracy or completeness of the Property Information and each RFP Respondent assumes all risk in connection with the use of the Property Information and by responding to the RFP releases ACHC and the Town of Acton and their Boards and officials from any liability whatsoever in connection with the use of the Property Information by the RFP Respondent.

1. Location and Site Information:

This RFP involves the sale of the Property located at 28 Willow Street and 214 Central Street, Acton, MA, described as follows:

- The Property was taken by the Town of Acton for nonpayment taxes in Land Court Case Nos. 112320 T.L. and 112319 T.L. (Judgments dated May 4, 1998).
- ACHC has the Property under Agreement with the Town and expects to close on the acquisition of the Property from the Town immediately prior to its disposition to the successful RFP Respondent (Exhibit B).
- The Property is shown as Lot 4 on an Approval Not Required Plan dated March 1, 2006, endorsed for the Acton Planning Board on March 22, 2006, and recorded in the Middlesex South Registry of Deeds as Plan No. 438 of 2006 (Exhibit C).
- The Property consists of 15,335 \pm square feet, with 104.33 \pm feet of frontage on Willow Street and 68.0 \pm feet of frontage on Central Street.
- The Property is to be conveyed with the benefit of a perpetual Access & Utility Easement to be granted to ACHC by the abutter Cecelia Joan Flannery pursuant to a Memorandum of Agreement dated April 3, 2006, amended on December 14, 2006 (Exhibit D) ACHC expects to close on the acquisition of the Easement from Flannery immediately prior to its disposition to the successful RFP Respondent
- In acquiring the Property from the Town, ACHC paid the Town for outstanding back taxes, interest and penalties, and ACHC made a payment in lieu of taxes calculated in accordance with M.G.L. c. 44, ' 63A. As there is no minimum bid price, an RFP Respondent (while free to make a proposal it deems most advantageous) is not obligated to reimburse ACHC for these amounts.

2. Buildings and Improvements:

There currently exist a building and improvements, fixtures and equipment on and under the Property. The Successful RFP Respondent shall be responsible for the demolition and removal of any such buildings, improvements, fixtures and equipment currently situated on or under the Property in preparation for construction of the Project under this RFP.

3. Zoning:

The Property is currently zoned Village Residential. ACHC has received a Determination of Site Eligibility and Preliminary Approval of the Project under DHCD's Local Initiative Petition under the Local Initiative Program, 760 CMR 45.00, dated December 5, 2005, as amended dated December 15, 2005 (collectively the "LIP Approval;" Exhibit E), and ACHC has received a Comprehensive Permit for the Project pursuant to M.G.L. Chapter 40B (the "Comprehensive Permit;" Exhibit F) based on the Approved Comprehensive Permit Plans prepared by Stamski and McNary, Inc., dated June 2, 2006, revised 10/10/2006 (Exhibit G). All development and use of the Property shall conform to the requirements of the LIP Approval and the Comprehensive Permit.

4. Utilities and Infrastructure:

Public water, natural gas and electricity are available at the Property.

There is no public sewer serving the Property. The Acton Board of Health has issued a Sewage Disposal Permit for new construction of subsurface sewage disposal systems for the three proposed residential units on the Property (the "Sewage Disposal Permit;" Exhibit H) in accordance with the plans prepared by Town of Acton Engineering Department, dated 4/25/2006, entitled Subsurface Sewage Disposal Plan 28 Willow Street & 214 Central Street (the "Sewage Disposal Plans;" Exhibit I).

The Successful RFP Respondent shall be responsible for construction of the three sewage disposal systems in accordance with the Sewage Disposal Permit and the Sewage Disposal Plans.

The Successful RFP Respondent shall be responsible for making all utility connections and paying the cost involved.

In addition, the successful RFP Respondent shall at a minimum implement the Landscaping Plan and Notes for the Property described in Exhibit J.

5. Environmental Issues:

After acquiring tax title to the property in 1998, the Town retained O'Reilly, Talbot and Okun Associates Inc. ("OTO") to commence a Chapter 21E investigation of the property. That investigation revealed the release or threat of release of certain oil and/or hazardous materials at and from the Site in excess of the Massachusetts Department of Environmental Protection's RCS-1 Reportable Concentration for Soils Classified as S-1. The Town notified DEP of this condition and OTO conducted various assessment, containment and removal actions at the Site. In June 2002, OTO submitted a Phase II report and a Class A-2 Response Action Outcome Statement for the Site (attached hereto as Exhibit K). On April 10, 2003, DEP issued a Notice of Audit and Request for Site Inspection for the Site. In response, OTO prepared an Addendum to the Method 3 Risk Characterization, which evaluated potential risks associated with exposure to groundwater by construction/utility workers. For further information, RFP Respondents should consult DEP's file for RTN No. 2-12578.

6. Appraisal:

The firm of Avery and Associates has appraised the Property as of August 29, 2005, as set forth in the Appraisal Report dated September 6, 2005 (Exhibit L).

7. Respondent's Responsibility for Due Diligence:

RFP Respondents should undertake an independent review and analysis concerning physical conditions, environmental conditions, applicable zoning, required permits and approvals, and other development and legal considerations pertaining to the Property, the Work, and the proposed use.

ACHC and the Town of Acton make no representation or warranty with respect to the Property, including without limitation, ACHC's title to the Property, the value, quality or character of the Property or its fitness or suitability for any particular use and/or the physical and environmental condition of the Property.

The successful RFP Respondent shall accept the Property on a strictly "as is" basis without any warranty or obligation whatsoever on the part of ACHC and/or the Town of Acton.

The RFP Respondent shall release, defend, indemnify and hold ACHC and the Town of Acton harmless from and against any and all claims, damages, losses, penalties, costs, expenses and fees (including without limitation reasonable legal fees) attributable to the physical and environmental condition of the Property.

C. Evaluation of Proposals

ACHC will review all proposals received by the filing deadline in accordance with the Comparative Evaluation Criteria in Appendix I and the following procedure:

- Proposals will be evaluated and rated by an ACHC Selection Committee according to the Comparative Evaluation Criteria set forth in this Appendix I to the RFP.
- The Committee will make its recommendations to the ACHC Board.
- The ACHC Board will select the most advantageous proposal from the responsible and responsive RFP Respondents, taking into consideration the Comparative Evaluation Criteria, the Committee's recommendations, and the Board's own judgment as to which RFP Respondent best meets the Comparative Evaluation Criteria.
- ACHC will notify all RFP Respondents in writing of the decision.
- Under ACHC's enabling legislation, the actual disposition is subject to the approval of the Acton Board of Selectmen.

ACHC reserves the right to reject any and all proposals if ACHC determines that it is in its best interest to do so. ACHC also reserves the right to waive any informalities in the proposal process and to accept the proposal(s) deemed to be in the best interest of ACHC.

ACHC reserves the right to interview or to seek additional information from any RFP Respondent after the opening of Proposals but before entering into a Disposition Agreement, to reject any proposal if ACHC deems it to be in the best interests of ACHC, and to award the Disposition Agreement to the next qualified applicant.

D. Disposition Agreement

The successful RFP Respondent will have thirty (30) days from the time he/she/it receives notice from ACHC that the offer has been accepted to execute the Purchase and Sale Agreement for the Disposition of the Property (Disposition Agreement) (Exhibit M), with such mutually acceptable amendments as are consistent with this RFP and approved by ACHC. Any such amendments to the Disposition Agreement may be negotiated by ACHC after the successful bidder has been selected.

If the successful RFP Respondent fails to execute the Disposition Agreement within thirty (30) days of notice of award (or within any extension to which ACHC may agree in writing), ACHC may select the next most advantageous offer.

E. Specific Terms, Conditions and Restrictions on Reuse

Pursuant to M.G.L. c. 30B, § 16, ACHC sets the following terms, conditions and restrictions on the RFP Respondent's use of the Property pursuant to the RFP:

1. The Project

After acquiring the Property, the RFP Respondent shall, at its sole expense, perform and complete all work necessary for the design and construction of three residential condominium units in two buildings on the Property, together with related improvements, all in strict conformity with the following plans, specifications and requirements (the "Work"):

1. Architectural Drawings and Building Elevations for Willow/Central Residences prepared by Mangel Architects, Inc. (Exhibit N);
2. The attached Construction Specifications (Exhibit O).
3. The requirements of this RFP;
4. The requirements of the Disposition Agreement;
5. The requirements of the LIP Approval;
6. The requirements of the Comprehensive Permit;
7. Approved Comprehensive Permit Plans - Stamski and McNary, Inc. (Exhibit G)
8. The requirements of the Sewage Disposal Permit and the Sewage Disposal Plans; and
9. The requirements of all other required governmental permits and approvals.

2. Costs of the Work

The RFP Respondent shall be solely responsible for all costs and expenses of the Work, including without limitation, demolition of the existing building and improvements on the Property, the design and construction of the new buildings and improvements, the installation of all utilities and site work required for the proposed housing use, and any other measures necessary to construct and occupy the Project in compliance with all applicable federal, state and local laws, ordinances, rules, regulations and codes for the proposed use. Except to the extent provided herewith, the RFP Respondent shall, at its sole cost and expense, obtain all necessary permits, approvals and

licenses from governmental authorities, including the Town of Acton, required for Work.

The RFP Respondent shall pay (or cause to be paid) all costs and expenses associated with the Work (including, without limitation, all architectural, engineering, construction, legal and consultant fees and costs) and shall defend, indemnify and hold ACHC and the Town of Acton harmless from and against any and all claims, damages, losses, penalties, costs, expenses and fees (including without limitation reasonable legal fees) attributable to the performance of the Work.

3. **Performance Standards**

The RFP Respondent shall perform and complete the Work in a good and workmanlike manner, in compliance with good engineering and construction practices, using all new materials, and with the requirements of all applicable laws, ordinances, codes, orders, rules and regulations of all governmental authorities, agencies or departments with jurisdiction.

The RFP Respondent shall take all reasonably necessary measures to (i) minimize dust, noise and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by the Work, and (iii) make adequate provision for the safety and convenience of all persons affected thereby and to properly police same. Dust, noise and other effects of such work shall be controlled using commercially accepted methods customarily utilized in order to control deleterious effects associated with construction projects in a populated or developed area.

4. **Affordability Requirements**

ACHC has established the following affordable housing goals and guidelines for the reuse of the Property, which shall be incorporated as terms, conditions and restrictions on the RFP Respondent's use of the Property:

(a) **Unit Price Limits**

- 100% of the units shall be condominium units, each with an Exclusive Use Areas as shown on the project plans.
- There shall be one two-bedroom unit and one three-bedroom unit in a duplex farmhouse-style building on the Central Street side of the Property.
- There shall be one three-bedroom unit in a single family bungalow-style home on the Willow Street side of the Property.
- The initial sale price of the affordable three-bedroom unit in the single family home will not exceed \$176,500, and it will be sold pursuant to a lottery process as required by the Comprehensive Permit.

- The initial sale price of the two-bedroom affordable unit in the duplex will not exceed \$157,900, and it will be sold pursuant to a lottery process as required by the Comprehensive Permit.
- The initial sale price of the three-bedroom unit in the duplex (the "Duplex 3-Bedroom Unit") shall not exceed \$330,000, and that unit shall be subject to the special conditions in Section E.4.c below.
- Local preference for affordable units shall be provided to the maximum extent allowed by legal requirements.

(b) Minimum Affordability Commitment

- Each Proposal must meet the Minimum Affordability Commitment, as stated in the LIP Approval, Exhibit E.
- Without limitation, two of the units (not including the Duplex 3-Bedroom Unit) shall be restricted in perpetuity for occupancy by persons or households whose aggregate family income does not exceed 80% of the median gross income for the area ("AMI"), as established by the United States Department of Housing and Urban Development, consistent with the terms and policies of the Department of Housing and Community Development's Local Initiative Program and the Comprehensive Permit. These two units shall be eligible for qualification in and a new addition to the Town's Subsidized Housing Inventory under General Laws Chapter 40B.

(c) Special Conditions for Duplex 3-Bedroom

The following special conditions shall apply to the Duplex 3-Bedroom Unit and shall govern the successful RFP Respondent hereunder and its successors and assigns (collectively the "Developer"):

- (i) The Acton Housing Authority ("AHA") may issue its own Request for Proposals (the "AHA RFP") to acquire a 3-bedroom unit in the Town of Acton for its rental housing program.
- (ii) If the AHA RFP is issued on or before the thirtieth day after the issuance of a building permit for the Duplex 3-Bedroom Unit, the Developer shall timely and fully respond to the AHA RFP, and shall offer the Duplex 3-Bedroom Unit to AHA at a price not to exceed \$330,000.
- (iii) In the event that (A) AHA awards the acquisition contract to the Developer within thirty days after the AHA RFP bid opening, and (B) within thirty days thereafter AHA executes an agreement to

acquire the Duplex 3-Bedroom Unit and to close on that acquisition within thirty days after the issuance of a final occupancy permit for that unit, then the Developer shall sell the Duplex 3-Bedroom Unit to AHA pursuant to the AHA RFP award and that agreement, provided however that the Developer shall include in the deed to AHA of the Duplex 3-Bedroom Unit a perpetual restriction running for the benefit of ACHC to the following effect: "In the event that the Acton Housing Authority proposes to resell the Duplex 3-Bedroom Unit at any time, then the Acton Housing Authority shall provide advance written notice to the Acton Community Housing Corporation which shall have the option, exercisable on or before the 120th day after receipt of said notice, to buy down the Duplex 3-Bedroom Unit's maximum selling price to the then-applicable maximum selling price for the unit to be affordable to a 4 person household at 80% AMI (said buy down to be funded by ACHC making a payment in the amount of the difference between the appraised fair market value of the unit unrestricted and said then-applicable maximum selling price) and thereafter to restrict the Duplex 3-Bedroom Unit in perpetuity to be affordable for a 4 person household at 80% AMI."

- (iv) In the event AHA does not timely issue the AHA RFP, award the contract to the Developer, or execute the agreement to acquire the Duplex 3-Bedroom Unit as provided herein, then ACHC shall have the option, exercisable on or before the 120th day after issuance of the building permit for the Duplex 3-Bedroom Unit, to buy down the Duplex 3-Bedroom Unit's selling price from \$330,000 to \$176,500 (i.e. by a payment of \$153,500) and to restrict the Duplex 3-Bedroom Unit in perpetuity to be affordable for a 4 person household at 80% AMI.
- (v) In the event ACHC does not timely exercise that option, then the Developer shall sell and restrict the Duplex 3-Bedroom Unit to a qualifying 4 person household earning no more than 150% AMI at a selling price that is affordable to a household earning 130% of the AMI.
- (vi) Unless AHA acquires the Duplex 3-Bedroom Unit as set forth above, the Duplex 3-Bedroom Unit shall initially be sold pursuant to a lottery process as required by Comprehensive Permit Condition § E.4 to a qualifying household at the applicable affordability percentage, and shall be subject to a Perpetual Affordability Restriction as set forth in Comprehensive Permit Condition § E.5.

- (vii) In any event, the Duplex 3-Bedroom Unit shall be subject to a DHCD Universal Deed Rider that is adapted for the selected option and approved by Town Counsel. (See Comprehensive Permit Condition § E.)

5. Schedule

Each RFP Respondent shall submit with its proposal its anticipated critical path time schedule for major Project milestones (including such matters as financing, permitting, design, closing, construction, lottery, marketing and sale) so that the Work shall be commenced and completed, and the units marketed, sold and occupied as soon as reasonably possible. The schedule shall, at a minimum, meet the following requirements.

- The successful RFP Respondent shall be prepared to execute the Disposition Agreement within 30 days from the notice of award from the Town.
- The successful RFP Respondent shall close on the acquisition of the Property and commence the Work as soon as reasonably possible following the signing of the Disposition Agreement; provided, however, that the closing shall not occur unless and until the RFP Respondent has obtained a binding commitment from a governmental or institutional lender for a construction loan in an amount adequate, in the judgment of ACHC, to complete the Work hereunder.
- The closing on the disposition of the Property shall occur contemporaneously with the closing on the construction loan financing. Any mortgage securing the construction loan financing shall be expressly subject to the Disposition Agreement including the unit deed restrictions and resale affordability restrictions intended to ensure compliance with the affordable housing requirements of this RFP.
- The successful RFP Respondent shall complete the Work not later than eighteen (18) months after the closing on the disposition of the Property by ACHC to the RFP Respondent pursuant to the Disposition Agreement.

6. Right of Reverter

The Disposition Agreement shall incorporate a critical path time schedule for the Work and a deadline for completion of the Work. In the event that the RFP Respondent shall fail to commence the Work or to substantially complete the Work within the required time frames, ACHC shall provide written notice of that breach to the RFP Respondent.

In the event that the RFP Respondent does not cure said breach within thirty days after its receipt of that notice, or within such extended time as ACHC may in writing

agree, the Property shall revert to ACHC.

Commencement of the Work shall mean commencement (on or before the deadline specified) of construction of one or more buildings pursuant to building permit(s) issued by the Town of Acton. Substantial completion of the Work shall be mean that permanent certificates of occupancy have been issued for all three condominium units on or before the deadline specified.

F. Document Submission Requirements

The following documents (fully completed and executed as applicable) must accompany the proposal. Failure to provide any of the required documents may result in the determination that the Offer is non-responsive. Numbered tabs should match numbered items in the following table, and should appear in the order given.

The RFP Response should include a cover Letter with the following tabbed exhibits:

Tab	Contents
1.	Proposal Form (Exhibit P)
2.	Price Summary Form (Exhibit Q) along with a completed Pro Forma (a detailed breakdown of projected revenues and costs on the form provided as Exhibit R) (both in an sealed envelope labeled as set forth above)
3.	Certificate of Non-Collusion (Exhibit S)
4.	Disclosure of Beneficial Interest Form as required by M.G.L. c.7, ' 40J (Exhibit T)
5.	Non-Delinquency Statement required by M.G.L. c. 60, ' 77B (Exhibit U)
6.	Commitment for payment in lieu of taxes calculated in accordance with M.G.L. c. 44, ' 63A (Exhibit V)
7.	Acknowledgment that the sale is not exempt from the Title 5 inspection requirements of 310 CMR 15.301(f), if and as applicable (Exhibit W)
8.	Certification as to Payment of Taxes (Exhibit X)
9.	Copy of the Disposition Agreement indicating changes, if any, requested by the RFP Respondent (Exhibit M)
10.	Developer's Profile - - a brief summary of the Developer's organization and experience, resumes of principals, a list of 3 client/customer references, a financial statement, and a disclosure of any liens, foreclosures, bankruptcies, or other actions that would interfere with construction financing or delay the timely progress of the project
11.	General Contractor's Profile - - a brief summary of the contractor's organization and experience, resumes of principals, a list of 3 client/customer references, a financial statement, and a disclosure of any liens, foreclosures, bankruptcies, or other actions that would interfere with construction financing or delay the timely progress of the project. Names and similar summaries of all subcontractors are also required

12.	Letters of Reference -- one letter of reference each for the Developer, the Architect & Engineer, and the General Contractor from a client or customer
13.	Technical Proposal - detailed specifications of the proposed design, building materials, house components, unit amenities, and other planned improvements to the Property as part of the Work must be provided
14.	Critical path time schedule conforming to Section VII(d) above
15.	Corporate Resolution, if a Corporation (Exhibit Y)

Updated originals of forms 4-8 shall be executed and delivered by the RFP Respondent at Closing and as a pre-condition thereto.

Appendix I: Comparative Evaluation Criteria

1. Minimum Threshold Criteria

Submissions must meet the following minimum threshold criteria:

1. The Proposal must be complete and conform to all submission requirements set forth in this RFP and any Addendum to this RFP issued before the submission deadline.
2. The Proposal must be timely submitted.
3. The RFP Respondent must agree to engage a contractor licensed by the State of Massachusetts as a Construction Supervisor.
4. The Proposal must meet the Minimum Affordability Commitment, as stated above and in the LIP Approval, Exhibit E.
5. As part of this project, the RFP Respondent must agree to be responsible for the costs to hire a qualified agency to administer homebuyer qualification and the housing lottery process. Without limitation, the Developer shall agree to fund the expenses of the Lottery, and deposit \$500 in an account established by the Acton Community Housing Corporation to cover its expenses in overseeing the Lottery (Comprehensive Permit page 12).
6. The Developer shall agree to deposit \$4,500 in an escrow account established by the Town pursuant to G.L. c. 44, § 53G, to cover the Town's expenses in the monitoring compliance with the Profit Cap. Any funds not expended after the completion of the Town's determination of compliance with the Profit Cap shall be returned to the Developer. See Comprehensive Permit Condition § E.6.
7. The RFP Respondent may be a public agency, a non-profit organization, a limited dividend organization or a private party that shall form a limited dividend organization for purposes of the acquisition and development of the Property. [A "Limited Dividend Organization" means a person or entity which proposes to sponsor housing under M.G.L. c. 40B; and is not a public agency; and is eligible to receive a subsidy from a state or federal agency after a comprehensive permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to limit the dividend on the invested equity to no more than that allowed by the applicable statute or regulations governing the pertinent housing program.]

2. Competitive Evaluation Criteria

Each proposal meeting the minimum threshold criteria will then be judged on the following additional competitive evaluation criteria:

a. Affordability.

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators exceeds the Minimum Affordability Commitment by providing a greater percentage (*i.e.* 100%) or a greater mix (*i.e.* low and very low income) of affordable units. Given the importance of this criterion, as between two competing "Highly Advantageous" proposals, preference as to the affordability criterion will be given to the proposal providing the greater percentage and greater mix of affordable units.
- An Advantageous rating will be given to a proposal that in the judgment of the evaluators meets the Minimum Affordability Commitment.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators fails to meet the Minimum Affordability Commitment.

b. Financial Capacity.

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators identifies a Project Team with exceptional financial capacity to undertake the Project proven by prior experience financing real estate development, including securing any necessary interim financing, ability to provide any equity contribution projected in the Sources and Uses Budget, and ability to secure financing as evidenced by letter(s) from prospective lender(s) and other supporting material.
- An Advantageous rating will be given to a proposal that in the judgment of the evaluators identifies a Project Team with reasonable financial capacity to undertake the Project.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators fails to identify a Project Team with reasonable financial capacity to undertake the Project.

c. **Project Team.**

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators identifies a Project Team capable of completing the Project successfully and in an expedited manner as evidence by such factors as (a) extensive experience with residential projects, (b) an exceptional record of designing and constructing residential projects ahead of schedule, within budget and with minimal changes during construction, and (c) the resumes and references of principals and senior staff assigned to the Project.
- An Advantageous rating will be given to a proposal that in the judgment of the evaluators identifies a Project Team capable of completing the Project acceptably and on time as evidence by such factors as (a) suitable experience with residential projects, (b) a suitable record of designing and constructing residential projects on time and within budget, and (c) the resumes and references of principals and senior staff assigned to the Project.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators fails to identify a Project Team capable of completing the Project acceptably and on time.

d. **Feasibility of Proposed Project.**

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators is highly feasible based on an analysis of the development budget, the demonstrated ability of the Project Team to resolve environmental and permitting issues as they may arise, the likely acceptability of designs by regulators, lenders and funders, the likelihood of obtaining proposed financing for construction and soft costs as estimated, and the reasonableness of the budget.
- An Advantageous rating will be given to a proposal that in the judgment of the evaluators is feasible based on an analysis of these factors.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators is not feasible based on an analysis of these factors.

e. **Quality of Design and Construction.**

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators presents qualitative improvement to the proposed design; presents superior merit in terms of architectural features, unit designs and amenities, and the quality of proposed construction; and observes careful site planning.
- An Advantageous rating will be given to a proposal that in the judgment of the evaluators complies with the design requirements of the RFP and presents an acceptable quality of building and unit design and construction.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators presents an unacceptable quality of building and unit design and construction.

f. **Proposed project development schedule.**

A Project with a shorter but achievable development schedule will receive a more advantageous rating on this criterion than a Project with a longer development schedule or an impractical development schedule.

g. **Proposed Price/Subsidy.**

Because the sale price of all three units will be restricted under the RFP, the successful RFP Respondent's potential revenue from the project is, by definition, limited. Depending on the development costs, there is a potential for the RFP Respondent's costs to exceed its revenue. To help bridge the gap and to afford a reasonable development profit, there is no minimum bid price for the Property. In addition, subsidies may be available for this project under the Town of Acton's Community Preservation Act ("CPA") Fund or through donations and other governmental programs. In the price proposal, the RFP Respondent must specify its proposed purchase price offered for the Property and any proposed grants the RFP Respondent will request from ACHC and/or the Town of Acton (such as Community Preservation Act funds). In this way, ACHC will be able to compare each offer based on the net financial gain or net financial subsidy.

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators presents a positive financial gain to ACHC and the Town of Acton, without materially sacrificing on

the quality of the Project, measured in terms of (a) the proposed purchase price offered for the property, minus (b) any proposed subsidies to be requested by the RFP Respondent from ACHC and/or the Town of Acton (such as Community Preservation Act funds). With respect to this criterion, as between two Highly Advantageous projects, the project with the higher positive financial gain (if any) to ACHC and the Town, without materially sacrificing on the quality of the Project, will be considered more favorably.

- An Advantageous rating will be given to a proposal that in the judgment of the evaluators presents modest need for a net subsidy from ACHC and/or the Town of Acton, without materially sacrificing on the quality of the Project, measured in terms of (a) the proposed price offered for the property, minus (b) any proposed subsidies to be requested by the RFP Respondent from ACHC and/or the Town of Acton (such as Community Preservation Act funds). With respect to this criterion, as between two Advantageous projects, the project with the smaller net subsidy from ACHC and/or the Town, without materially sacrificing on the quality of the Project, will be considered more favorably.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators presents the need for an unacceptable net subsidy from ACHC and/or the Town of Acton.

h. Requested Changes to Disposition Agreement.

There will be an evaluation of changes to the Disposition Agreement requested by the RFP Respondent. RFP Respondents requesting fewer substantive changes to the Disposition Agreement will receive a more advantageous rating on this criterion.

i. Overall Score and Ranking

After evaluating a proposal on the foregoing factors, the evaluators will provide an overall score and ranking for the proposal as compared to other proposals. For example, a proposal which achieves "Highly Advantageous" and/or "Advantageous" rankings in several categories will not necessarily be disqualified simply because it received an "Unacceptable" ranking in one or more other categories if, in the judgment of the evaluators, the proposal on the whole is "Advantageous" or "Highly Advantageous" to the Town. Any notice of award, however, will be contingent upon the project proponent curing any "Unacceptable" criterion ranking prior to the execution of the Disposition Agreement.

Appendix II: List of Exhibits

Exhibit	Description
A	Article 29 adopted at the 2006 Acton Annual Town Meeting
B	Agreement between the Town and ACHC for acquisition of the Property
C	Approval Not Required Plan dated March 1, 2006, endorsed for the Acton Planning Board on March 22, 2006
D	Memorandum of Agreement dated April 3, 2006, amended on December 14, 2006 for Access & Utility Easement to be granted to ACHC
E	Preliminary Approval of the Project under DHCD's Local Initiative Program
F	Comprehensive Permit for the Project
G	Approved Comprehensive Permit Plans - Stamski and McNary, Inc. dated June 2, 2006, revised 10/10/2006
H	Sewage Disposal Permits for the Project
I	Sewage Disposal Plans for the Project
J	Landscape Plan and Notes
K	Environmental Report
L	Appraisal Report
M	Purchase and Sale Agreement for the Disposition of the Property
N	Architectural Drawings and Building Elevations for Willow/Central Residences prepared by Mangel Architects, Inc. dated 1/26/07, based on Proposed Schematic Site Plan and Proposed Schematic Elevations prepared by Terrence G. Heinlein AIA Architect dated 8/14/06
O	Construction Specifications
P	Proposal Form
Q	Price Summary Form
R	Pro Forma Form
S	Certificate of Non-Collusion
T	Disclosure of Beneficial Interest Form
U	Non-Delinquency Statement
V	Commitment for payment in lieu of taxes
W	Acknowledgment that the sale is not exempt from the Title 5 inspection requirements of 310 CMR 15.301(f)
X	Certification as to Payment of Taxes
Y	Corporate Resolution

ADDENDUM 1 TO RFP 3/19/07-863

**{Request for Proposals (RFP) For
Disposition of Municipal Real Estate
For Affordable Housing Purposes
Acton Community Housing Corporation}**

The Acton Community Housing Corporation ("ACHC") issues the following Addendum to RFP 3/19/07-863:

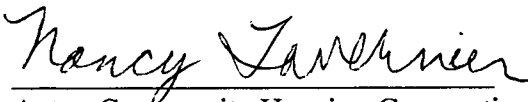
At RFP page 15, § F, Rows 10 and 11, delete the requirement for submission of a Financial Statement with the Developer's Profile and the General Contractor's Profile, and add a requirement for the submission of a letter or letters of reference from prior or prospective lender(s) so that those rows shall read:

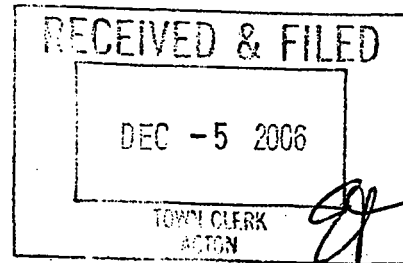
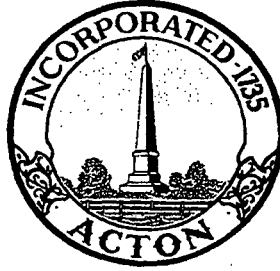
10. Developer's Profile - - a brief summary of the Developer's organization and experience, resumes of principals, a list of 3 client/customer references, a letter or letters of reference from prior or prospective lender(s) attesting to the Developer's creditworthiness, and a disclosure of any liens, foreclosures, bankruptcies, or other actions that would interfere with construction financing or delay the timely progress of the project.

11. General Contractor's Profile - - a brief summary of the contractor's organization and experience, resumes of principals, a list of 3 client/customer references, a letter or letters of reference from prior or prospective lender(s) attesting to the General Contractor's creditworthiness, and a disclosure of any liens, foreclosures, bankruptcies, or other actions that would interfere with construction financing or delay the timely progress of the project. Names and similar summaries of all subcontractors are also required.

At RFP page 16, § F, Row 12, delete the requirement for submission of a letter of reference each for the Architect and Engineer so that the row shall read .

12. Letters of Reference - - one letter of reference each for the Developer and the General Contractor from a client or customer.


Acton Community Housing Corporation
By: Nancy Tavernier
Its: Duly Authorized Chair
Dated: March 7, 2007



**DECISION UPON APPLICATION OF THE
ACTON COMMUNITY HOUSING CORPORATION FOR
A COMPREHENSIVE PERMIT FOR 214 CENTRAL
STREET & 28 WILLOW STREET**

I. APPLICANT AND PUBLIC HEARING

A public hearing of the Acton Board of Appeals (the "Board") was held in the Town Hall on Wednesday, October 11, 2006 on the application of the Acton Community Housing Corporation (the "Applicant", which term shall include its successors and assigns) for a comprehensive permit under Massachusetts General Laws Chapter 40B, §§ 20-23 (the "Act") to build low or moderate income housing in a development consisting of two (2) dwelling structures and containing a total of three (3) housing units (the "Project") located at 214 Central Street and 28 Willow Street in Acton and identified as Parcels B-64 and B-65 on Assessor's Map F2 (the "Site"). The Board held continued public hearings on November 15, 2006 and on December 4, 2006. The hearing was closed on December 4, 2006 and deliberations conducted on that date.

Sitting as members of the Board throughout the hearings were Jonathan Wagner, Chairman; Kenneth Kozik, Member and Cara Voutselas, Member.

II. THE PROJECT

A. The Project consists of 15,335 square feet of land located at 214 Central Street & 28 Willow Street in Acton. The Site presently comprises two separate lots, with one lot containing a single structure (which is severely dilapidated). This structure will be razed and the two lots combined into a single lot upon which two new residential structures will be built. (The Applicant's application and many documents included with and incorporated therein contain references to "212 Central Street" and "214 Central Street". The present Central Street lot is known as and numbered "214 Central Street"; but the proposed structure on said lot is designated on the plans as "212 Central Street" and "214 Central Street" because that single structure will contain two separate condominium units having those designated addresses. For purposes of this Decision, "212 Central Street" and "214 Central Street" are considered one and the same except

where reference is made specifically to either one individually, in which case the reference shall pertain only to that unit. The third unit of the Project is a separate structure to be built on the present Willow Street lot and is designated "28 Willow Street".) The Applicant will not develop the Project but will put the project out for public bid and award the Project to a developer after issuance of the Comprehensive Permit. (See the draft of the proposed RFP in the Application Packet, Exhibit 13, Section 3.) The developer to be selected pursuant to this process is referred to herein as the "Developer."

B. On September 5, 2006 the Applicant submitted an application for a Comprehensive Permit to build two (2) dwelling structures containing a total of three (3) housing units. The Project will be a 3-unit condominium, with one structure being a single free standing unit designated "28 Willow Street" and the second structure being a single free standing structure containing two individual condominium units designated "212 Central Street" and "214 Central Street" respectively. The units designated 28 Willow Street and 212 Central Street will be sold as Affordable Housing and 214 Central Street will be sold as a Restricted Unit as set forth in Section E of this Decision.

C. The unit designated 28 Willow Street contains 3 bedrooms and 1½ bathrooms; the unit designated 212 Central Street contains 2 bedrooms and 1½ bathrooms and the unit designated 214 Central Street contains 3 bedrooms and 1½ bathrooms.

D. The Site is located within the VR Zoning District.

E. The Plan (the "Plan") for the Project is entitled "Comprehensive Permit Plan for 28 Willow Street & 212-214 Central Street, Acton, Massachusetts" dated June 2, 2006 Locus Plan Scale: 1"-1200' " by Stamski and McNary, Inc., Acton, Massachusetts consisting of 12 sheets (See Exhibit 16).

III. JURISDICTIONAL REQUIREMENTS

Pursuant to Massachusetts General Laws Chapter 40B, §§ 20-23 and regulations promulgated by the Department of Housing and Community Development Housing Appeals Committee, an applicant for a comprehensive permit must fulfill three jurisdictional requirements:

A. Status of Applicant

The applicant must be a public agency, a non-profit organization, or a limited dividend organization. The Board finds that the Applicant is a nonprofit housing corporation subject to the supervision of the Board of Selectmen of the Town of Acton established pursuant to a special act of the Massachusetts Legislature, i.e. Chapter 143 of the Acts of 1996, § 1 (See Exhibit 13, Section 4) and therefor satisfies this jurisdictional requirement.

B. Public Subsidy Requirement

Chapter 40B requires that the project be fundable by a subsidizing agency under a low and moderate income housing subsidy program. The Applicant has received a Determination of Site Eligibility and Preliminary Approval of the Project under DHCD's Local Initiative Program, 760 CMR 45.00, dated December 5, 2005, as amended dated December 15, 2005. (See Exhibit 13, Section 3). The Board finds that this DHCD Determination of Site Eligibility satisfies this jurisdictional requirement.

C. Site Control Requirement

An applicant must hold legal title, or sufficient legal right to acquire title to the property upon which the Project will be built. The Applicant has executed a "Disposition Agreement" dated April 27, 2006 with the Town of Acton, the title holder of the entire Site. Said Disposition Agreement provides that the Town will convey the Site to the Applicant. (See Exhibit 13, Section 3). The Board finds that the Applicant has sufficient legal right to acquire title to the Site and this jurisdictional requirement is satisfied.

IV. REQUESTED WAIVERS FROM LOCAL BY-LAWS AND ZBA REGULATIONS

A. Acton Zoning Bylaw

1. Section 3.3 and Item (3) of the Notes For Table of Principal Uses – Section 3.3 and Item (3) of the Notes For Table of Principal Uses are zoning provisions relating to housing density. Section 3.3 limits residential uses to one Building to be located on a lot. Item (3) of the Notes for Table of Principal Uses limits multifamily dwellings to not more than 4 dwelling units; and the Applicant proposes to erect 2 detached structures with a total of three units. Housing density is a legitimate planning, health and safety concern to be addressed by the Board in the context of a comprehensive permit application. As stated in the Acton Planning Board IDC Memo dated 9/22/2006 (Exhibit 8), the Site is located in an area favorable for higher density residential development within and near Acton's villages. Recognizing the need for low and moderate income housing and for the aforementioned considerations, the Board finds that the Site is appropriate for the development of affordable housing containing two structures and therefor grants waivers from Sections 3.3 and Item (3) of the Notes for Table of Principal Uses of the Acton Zoning Bylaw.

2. Section 3.3.2.5 General Uses - Section 3.3.2.5 limits a site to one (1) driveway or curb cut for access to the dwellings. The Applicant proposes three (3) driveways and three (3) curb cuts to separately access each of the three residential units. As the Site is at the intersection of two (2) streets and has frontage on both streets (and these streets are not the subject of unusually heavy traffic and not likely to be congested by the addition of 3 dwelling units), the Board finds that the Site is appropriate for the use of three (3) driveways and three (3) curb cuts and therefore grants a waiver from Section 3.3.2.5 of the Acton Zoning Bylaw.

3. Section 5 Dimensional Regulations and the Table of Standard Dimensional Regulations, including Sections 5.2.4 and 5.2.5 - Section 5.2.4 and Section 5.2.5 are zoning provisions relating to minimum setbacks from property lines. Section 5.2.4 requires a minimum front yard setback of 10 feet and Section 5.2.5 requires a minimum side yard setback of 10 feet. The Applicant proposes a front yard setback of 10 feet, but with the front porch of 212 Central Street intruding 3 feet into the setback area, meaning there is only a 7 foot setback for a small portion of the structure. The Applicant proposes a side yard setback of less than 10 feet on the 212 Central Street side of the structure, which is used as a driveway servicing that unit exclusively. (The actual setback appears to vary between 5-7 feet depending on the angle of the property line, but it is definitely less than the required 10 feet.) However, taking into consideration the existing setback and combining it with an easement granting exclusive use to the Applicant over a portion of the abutting parcel, the 10 foot setback is in fact satisfied according to the Plan. Recognizing the need for low and moderate income housing and for the aforementioned considerations, the Board finds that the setbacks proposed by the applicant are reasonable and not detrimental to the area and therefor grants a waiver from Sections 5.2.4 and 5.2.5 of the Acton Zoning Bylaw.

B. Acton Board of Appeals Rules and Regulations for Comprehensive Permits

1. Section 3.7 Legal Documents – Section 3.7 requires that proposed condominium documents (including documents applicable to homeowner association management) shall be submitted with the application. The Applicant requests a waiver from this requirement in light of the fact that the Project will be submitted for public bid and a prudent developer would want input into the drafting of such documents both in the bidding process and in completing the Project. Inasmuch as the Applicant is a nonprofit housing corporation subject to the supervision of the Board of Selectmen of the Town of Acton that will continue to oversee and monitor the Project after selecting a developer and will be consulting with Town Counsel on many aspects of the Project from start to finish, the Board grants a waiver from Section 3.7 of the Rules and Regulations for Comprehensive Permits.

2. Section 3.13.6, including Sections 3.13.6.1, 3.13.6.2, 3.13.6.3, 3.13.6.4 and 3.13.6.8 Plan and Profile Sheet – Said Sections 3.13.6.1, 3.13.6.2, 3.13.6.3, 3.13.6.4 and 3.13.6.8 require that the Project Plan include all proposed streets and ways. As the parcels are existing parcels and no new streets or ways are proposed, the Board grants a waiver from Sections 3.13.6.1, 3.13.6.2, 3.13.6.3, 3.13.6.4 and 3.13.6.8 of the Rules and Regulations for Comprehensive Permits.

3. Section 3.16 Development Schedule – Section 3.16 requires that a Development Schedule be included in the application showing that all affordable units will be completed before the last "market rate" units. As all units are either "Affordable" or "Restricted" units (i.e. there are no "market rate" units), the Board grants a waiver from Section 3.16 of the Rules and Regulations for Comprehensive Permits.

4. **Section 3.19 Market Study** – Section 3.19 requires that the application shall include a market study by a qualified appraiser or real estate professional showing sufficient demand for the proposed "market rate" units. As all units are either "Affordable" or "Restricted" units (i.e. there are no "market rate" units), the Board grants a waiver from Section 3.19 of the Rules and Regulations for Comprehensive Permits.

5. **Section 3.20 Developer Information** – Section 3.20 requires that the application shall include resume(s) of the applicant, developer, and/or development team with a description of experience with similar projects. The Applicant requests a waiver from this requirement since the Project will be submitted for public bid and the actual developer is unknown at this stage of the process. Inasmuch as the Applicant will select the developer and obviously will consider the developer's qualifications and experience in awarding the bid, the Board grants a waiver from Section 3.20 of the Rules and Regulations for Comprehensive Permits.

V. **CONCLUSORY FINDINGS**

Based on the evidence presented by the Applicant, local boards and officials and interested parties at the public hearings, the Board finds as follows:

A. Acton does not presently have sufficient low or moderate income housing to meet Chapter 40B's minimum criteria.

B. The proposed 3-unit project will, when conforming to the conditions set forth in this Decision, adequately provide for traffic circulation, storm water drainage, sewerage and water without an undue burden on the occupants of the Project or on the surrounding neighborhood or the Town.

C. The proposed 3-unit Project will, when conforming to the conditions set forth in this Decision, not be a threat to the public health and safety of the occupants of the Project, the neighborhood or the Town.

D. The proposed 3-unit Project on the Site is supported by the evidence, and as conditioned below, (i) is consistent with the Master Plan, (ii) is not rendered uneconomic by the terms and conditions of this Decision, (iii) represents a reasonable balance of the regional need for low and moderate income housing against important local planning concerns, and (iv) is consistent with the local needs within the meaning of Massachusetts General Laws, Chapter 40B, Section 20.

E. The following waivers from local bylaws and regulations are granted subject to the terms and conditions set forth herein:

1. **Acton Zoning Bylaw**

- (a) **Section 3.3 and Item (3) of the Notes For Table of Principal Uses** – to allow construction of more than one residential building

on a lot and to allow construction of two (2) Dwellings containing three (3) residential units;

(b) Section 3.3.2.5 General Use – to allow three (3) driveways and three (3) curb cuts on a single lot;

(c) Section 5 Dimensional Regulations Table of Standard Dimensional Regulations, Sections 5.2.4 and 5.2.5 – to allow setbacks of less than 10 feet for front and side yards;

2. Comprehensive Permit Rules and Regulations

(a) Section 3.7 Legal Documents –to allow non-submission of condominium documents with Application;

(b) Section 3.13.6, Sections 3.13.6.1, 3.13.6.2, 3.13.6.3, 3.13.6.4 and 3.13.6.8 Plan and Profile Sheet – to allow non-submission of Plan showing streets and ways with the application;

(c) Section 3.16 Development Schedule – to allow non-submission of a Development Schedule with the application;

(d) Section 3.19 Market Study – to allow non-submission of a Market Study with the application;

(e) Section 3.20 Developer Information - to allow non-submission of Developer Information with the application.

3. Waivers Not Listed By granting the foregoing waivers from local bylaws and regulations, it is the intention of this Comprehensive Permit to permit construction of the Project as shown on the Plan. If, in reviewing the Applicant's building permit application(s), the Building Commissioner determines that any additional waiver from local bylaws or regulations is necessary to permit construction to proceed as shown on the Plan, the Building Commissioner shall proceed as follows: (a) any matter of a *de minimis* nature shall be deemed within the scope of the waivers granted by this Comprehensive Permit; and (b) any matter of a substantive nature having a potential adverse impact on public health, safety, welfare or the environment shall be reported back to the Board for expeditious disposition of the Applicant's request for a waiver therefrom.

VI. CONDITIONS

For the foregoing reasons the Board grants the application of Acton Community Housing Corporation for a comprehensive permit for the Project under Chapter 40B, subject to each and every one of the following conditions:

A. General Conditions

A1. Before the Applicant begins any construction on the buildings and units in this project, the Applicant shall submit to the Board a final comprehensive permit site plan, for technical review by the Board to ensure that it is consistent with and in conformity with this Decision, which upon such finding shall be approved and endorsed by the Board (the "Approved Plan"). When creating the Approved Plan, the Applicant shall make all of the changes to the Plan as recommended by:

- (a) Engineering Department's 9/25/2005 IDC Memo (Exhibit 4)
- (b) Planning Board's 9/25/2005 IDC Memo (Exhibit 8)
- (c) Health Department's 5/9/2006 IDC Memo (Exhibit 5)

A2. This Decision and the Approved Plan shall be recorded at the Middlesex South District Registry of Deeds. This Decision shall become effective upon recording. Proof of recording shall be forwarded to the Board prior to issuance of a building permit or the start of construction.

A3. The Applicant shall comply with all local rules and regulations of the Town of Acton and its boards and commissions unless expressly waived herein or as otherwise addressed in these conditions.

A.4. The Applicant shall pay all fees of the Town of Acton imposed generally in respect of construction projects and for the purposes of monitoring compliance of the Project's building construction and occupancy in accordance with this Comprehensive Permit.

A.5. The Applicant shall copy the Board and the Building Commissioner on all correspondence between the Applicant and any federal, state or Town official, board or commission that concerns the conditions set forth in this Decision.

A.6. The Applicant shall comply with the State Building Code and any local regulations or fees of the Building Commissioner. The Applicant shall pay all required fees for all such building permits including any fees charged for inspections and permits.

A.7. The Applicant shall obtain temporary easements or written permission from any abutting property owner if, during the course of construction, it becomes necessary to enter upon abutting land for construction or planting.

A.8. Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant and the Applicant's successors and assigns for as long as the Project and the use of the land does not strictly and fully conform with the requirements of the Acton Zoning Bylaw; and

reference to these conditions shall be incorporated in the Master Deed and in each Unit Deed recorded for the Project and for any unit in the Project.

A.9. This Decision permits the construction, use and occupancy of 3 housing units on the Site. The construction and use of the Site shall be in conformity with the Plan, and there shall be no further subdivision of the Site, or the creation of additional housing units or any other structures or infrastructure except that which is showing the Plan, without further approval of the Board in the form of an amendment to this Decision.

B. Submission Requirements

B.1. Pre-construction Submissions: Before the Developer begins any construction of the buildings and units in the Project, the Developer shall have:

- (a) delivered to the Board, from a public or private financing institution, or institutions, a written commitment to provide the financing necessary for the construction of the Project as approved by this Decision;
- (b) delivered to the Board the organizational papers of the limited dividend organization which will construct the Project and a certified copy of any determination by the DHCD that the organization qualifies as a limited dividend organization within the meaning of the Act and what the limitation on dividend is;
- (c) obtained, and filed with the Board a copy of any approvals from the Acton Board of Health which may be required under any statute, code, or rule and regulation affecting public health not otherwise preempted by Chapter 40B, to the extent not otherwise expressly covered by this Decision;
- (d) delivered to the Board final architectural drawings for all buildings shown on the Plan, providing a scaled depiction of the front, rear and side elevations;
- (e) delivered to the Board a copy of the recorded deed transferring title of the Site to the Applicant and from the Applicant to the Developer;
- (f) delivered to the Board any and all Condominium Documents together with certification by Town Counsel of the Town of Acton that said Condominium Documents are consistent with and in conformity with this Decision

B.2. As Built Plans: Prior to the occupancy or use of the final unit constituting a part of the Project, the Applicant shall submit to the Board an "As Built Plan" showing all pavement, buildings, drainage structures and other infrastructure as they exist on the Site, above and below grade, including appropriate grades and elevations. The plans shall be signed by a registered land surveyor or civil engineer,

certifying that the Project as built conforms to and complies with the conditions of this Comprehensive Permit.

B.3. As Built Utilities Plan: An accurate as built utilities plan and profile, showing actual in-ground installation of all utilities, shall be submitted to the Department of Public Works after completion of construction.

C. Site Development Construction Conditions

C.1. The Applicant shall ensure safe and convenient vehicular access to the Site during the entire duration of the Project. Members of the Board shall be allowed access to the Site to observe and inspect the site and construction progress until such time as the Project has been completed.

C.2. The Applicant shall submit a "progress submittal," including design drawings, with the Acton Building Commissioner when the project is approximately 50% complete. Progress submittals shall include any and all updated or revised design calculations supplementing the original design plans

C.3. The Applicant shall be responsible to ensure that nuisance conditions do not exist in and around the site during the construction operations. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area.

C.4. Work Hours – With the exception of hauling earth to and from the site, the hours of operation for any construction activities on-site shall be between 7AM and 7PM, Monday through Friday, 8AM and 5PM on Saturdays, and no work shall be allowed on-site on Sundays or on Holidays as recognized by the Commonwealth of Massachusetts. All earth hauling to and from the site is limited to Monday – Friday 9AM – 4PM.

C.5. The Applicant shall implement dust control operations, in an approved manner, whenever necessary or whenever directed by the Building Commissioner or the Town Engineer, even though other work on the project may be suspended as a result thereof. Methods of controlling dust shall meet all air pollutant standards as set forth by federal and state regulatory agencies.

C.6. The Applicant shall implement measures to ensure that noise from project construction activities does not exceed acceptable levels, as set forth by federal and state regulatory agencies. The Applicant shall cease any excessively loud activities when directed by the Building Commissioner.

C.7. The Applicant shall implement necessary controls to ensure that vibration does not create a nuisance or hazard for property abutters.

C.8. The Applicant shall implement necessary traffic safety controls to ensure a safe and convenient vehicular access in and around the site. Any traffic problems that

occur as a result of site operations and construction shall be mitigated immediately at the expense of the Applicant. Additional traffic mitigation measures may be required as necessary, or as directed by the Building Commissioner.

C.9. The Applicant is responsible for the sweeping, removal of snow and sanding of internal roadways permitting access to residents and emergency vehicles during construction and until the Condo Association has been legally established.

C.10. Burial of any stumps or debris on site is expressly prohibited. Localized burial of stones and/or boulders is prohibited to prevent the creation of voids from soil settlement over time.

C.11. Upon the request of the Building Commissioner, soil material to be used as backfill for pipes, roads and/or structures (i.e., soil detention basins) shall be tested at the expense of the Applicant, by a firm selected by the Board. Testing of said backfill shall be performed in conformance with standards and frequencies established by the Building Commissioner.

C.12. Utilities, including but not necessarily limited to electric, cable and telephone shall be located underground.

C.13. No building areas shall be left in an open, unstabilized condition for longer than sixty (60) days. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas.

C.14. Construction vehicles shall be parked on site and off Central Street and Willow Street at all times.

C.15. A licensed blasting professional shall do all blasting on the site after proper pre-blast inspections have been conducted and all required permits have been obtained from the Acton Fire Department.

D. Legal Requirements

D.1 Any sale or transfer of rights or interest in all or any part of the Site shall include a condition that successors are bound to the terms and conditions of this Comprehensive Permit.

D.2 The Applicant and/or subsequent Owner(s) shall be bound by all conditions and requirements set forth in this Comprehensive Permit.

D.3 In setting the percentages of beneficial interest in the condominium common areas in the Condominium Master Deed, the Applicant shall ensure that the percentages assigned to the units reflect their fair market value, taking into account the housing restrictions that encumber the units.

D.4 The roadways, utilities, drainage systems, and all other infrastructure shown in the Plan shall remain private and the Town of Acton shall not have, now or ever, any legal responsibility for the operation or maintenance of the infrastructure, including but not limited to snow removal and trash collection.

E. Affordability Requirements

To the extent permitted, by the DHCD, the following conditions shall apply. Applicant shall support the Town in obtaining the DHCD's approval of the following conditions:

E.1 Affordable Units - To the extent permitted by the DHCD: a) the units designated 28 Willow Street and 212 Central Street shall be designated Affordable Units and shall be sold to households earning no more than 80% of the Area Median Income, adjusted for household size (3-person household for the 2-bedroom unit, and 4-person household for the 3-bedroom unit), as published by the Department of Housing and Urban Development for the Boston-Cambridge-Quincy Metropolitan Statistical Area; and b) one of the affordable units will be a Local Preference unit (as defined under Section E.4 below) and the second unit will be sold to an at-large household.

E.2 Restricted Unit - With respect to 214 Central Street, the Applicant shall either (a) sell the unit to the Acton Housing Authority if the unit is selected by that Authority pursuant to a separate RFP process] to use for its low-income family rental program or]; or (b) sell the unit to a 4 person household earning no more than 150% AMI at a price that is affordable to a household earning 130% of the AMI. In any event, the unit will be subject to a DHCD Universal Deed Rider that is adapted for the selected option and approved by Town Counsel. (See Exhibit 13, Section 1.)

E.3 Sale Prices - The maximum sale prices for the Affordable Units shall be reviewed and approved by the DHCD at the time of lottery for the selection of buyers of the Affordable Units. Subject to the approval of DHCD the sale price for the Affordable Units shall be set to be affordable to a three person household for the 2-bedroom unit or a four person household for the 3-bedroom unit at 70% of the Area Median Income published by the Department of Housing and Urban Development for the Boston-Cambridge-Quincy Metropolitan Statistical Area. Any modification or deviation from the designation of units as originally proposed and reviewed by the DHCD shall be subject to approval by the DHCD.

E.4 Selection of Buyers for Affordable Units - The Developer shall obtain the DHCD approval of a buyer selection plan for the sale of the Affordable Units prior to putting the Affordable Units on the market, and the Applicant's approval of a buyer selection plan for the sale of 214 Central Street in the event that the unit is not sold to the Acton Housing Authority pursuant to the above-referenced RFP process. Buyers shall be selected through a fair lottery process (the "Lottery"). To the maximum extent permitted by law and the DHCD, first preference for the purchase of one of the two Affordable

Units shall be given to households that meet one or more of the following "Acton Connection" preference criteria:

(a) currently a legal resident of the Town of Acton. For purposes of the Lottery, a person shall be deemed a resident if that person has been registered as an Acton resident with the Acton Town Clerk pursuant to G.L. c. 51, § 4 and would be considered a resident under the United States Census Bureau's guidelines. ("Usual residence" has been defined as the place where the person lives and sleeps most of the time. This place is not necessarily the same as the person's voting residence or legal residence. Also, non-citizens who are living in the United States are included, regardless of their immigration status.)

(b) a son or daughter of an Acton resident

(c) an employee of the Town of Acton, the Acton Water District, the Acton Public Schools, the Acton-Boxborough Regional School District

(d) currently or privately employed within the Town of Acton

The selection of purchasers for the Affordable Units and 214 Central Street, as applicable, including the administration of the Lottery, shall be administered by a consultant retained and funded by the Applicant. The Lottery shall be implemented pursuant to a Lottery Plan developed by the lottery consultant and approved by the DHCD. The Acton Community Housing Corporation, if permitted by the DHCD, shall oversee the lottery. The Developer shall fund the expenses of the Lottery, and deposit \$500 in an account established by the Acton Community Housing Corporation to cover its expenses in overseeing the lottery, if permitted by DHCD.

Selected purchasers shall complete a first-time homebuyer course before the closing of the purchase of an affordable unit. The Applicant shall request that the DHCD shall make available a list of such courses for purchasers to attend.

Income eligibility shall be governed by the rules and regulations of the Local Initiative Program, or in default, the rules and standards employed by the Department of Housing and Urban Development in the selection of income-eligible tenants for publicly subsidized housing.

If permitted by the DHCD, disputes concerning income qualification and Acton Connection qualification shall be resolved in the first instance by the Town through the Board of Selectmen or its designee, Acton Community Housing Corporation. A party aggrieved by qualification-related decision of the Acton Community Housing Corporation may appeal the decision to the Board for a final determination.

The provisions of this section are intended to complement and not to override or supersede any rules, regulations, or requirements of the Department of Housing and Community Development, the Massachusetts Commission Against Discrimination, the

Local Initiative Program, or any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.

E.5 Perpetual Affordability Restriction - Prior to the issuance of any building permits, a Regulatory Agreement, in a form acceptable to the DHCD shall be executed and recorded. The Regulatory Agreement shall provide, among other things, that (a) two (2) of the units in the Project will be sold and resold subject to a Deed Rider, in a form acceptable to the DHCD, and (b) the Project Owner's profit shall be limited to 20% of the total development cost of the Project as defined by the Regulatory Agreement and applicable regulations. The Deed Rider shall be attached to and recorded with the Deed for each and every Affordable Unit in the Project at the time of each sale and resale, and the Deed Rider shall restrict each such Affordable Unit pursuant to this Decision in perpetuity in accordance with the requirements of M. G. L. c. 184, §§ 31-33. After obtaining the DHCD's final approval of the Regulatory Agreement and Deed Rider, the Applicant shall use its best efforts to obtain any necessary governmental approvals for such a deed restriction to last in perpetuity, including without limitation the approval of the DHCD, if required pursuant to M. G. L. c. 184, s 32 or other law. The Applicant shall submit to the Board written evidence of the Applicant's efforts to secure approval of the perpetual restriction and all responses thereto. The absence of a response shall not be deemed a denial of the request to approve the perpetual restriction. In the event that 214 Central Street is not sold to the Acton Housing Authority pursuant to a separate RFP process, that unit shall also be included within the Regulatory Agreement and treated in the same manner as the Affordable Units, except that 214 Central Street shall be sold to a four-person household earning no more than 150% AMI at a price that is affordable to a household earning 130% of the AMI.

In any event, as this Decision grants permission to build the Project under the comprehensive permit statute, G. L. c. 40B, §§20 -23 (the "Act"), and as the Applicant has obtained the benefits of a comprehensive permit, the Project shall remain subject to the restrictions imposed by the Act so long as the Project is not in compliance with the Town of Acton's zoning requirements which otherwise would be applicable to the Site and the Project but for the comprehensive permit's override of local bylaws to promote affordable housing. Accordingly, this Decision and the Deed Rider shall restrict each such Affordable Unit so long as the Project is not in compliance with the Town of Acton's zoning bylaw, so that those units continue to serve the public interest for which the Project was authorized. It is the express intention of this Decision that the period of affordability shall be the longest period allowed by law.

In the event that the Applicant shall submit to the Board written evidence of the Applicant's efforts to secure governmental approval of the perpetual restriction, the written denial thereof, and the grounds for denial; the Applicant shall grant to the Town of Acton or its designee subject to the approval of the DHCD in the Deed Rider a right of first refusal, in a form mutually acceptable to counsel for the Applicant and to Town Counsel, covering each Affordable Unit in the Project which shall be triggered upon the expiration of the affordability period.

E.6 Profit Cap - To conform to the intent of the Act that profits from the Project be reasonable and limited, the Developer shall be limited to an overall profit cap of twenty percent (20%) of total development costs of the Project, as accepted by the DHCD (the "Profit Cap"). The Developer shall cause a certified public accountant ("CPA") to review the financial records of the Project to determine whether the Developer has conformed to the Profit Cap requirements of this Comprehensive Permit Decision. The CPA shall submit to the Board and the DHCD a CPA certification that either the Developer has conformed to the Profit Cap, or certifying the actual profit from the development. If the Developer has exceeded the 20% Profit Cap as determined by the DHCD, if permitted by the DHCD, the Developer shall donate the excess profit above the Profit Cap to the Town of Acton to be used in the discretion of the Board of Selectmen for the express purpose of promoting, encouraging, creating, improving or subsidizing the construction or rehabilitation of affordable housing in the Town of Acton. The Developer shall deposit \$4,500. in an escrow account set up by the Town pursuant to G.L. c. 44, §53G to cover the Town's expenses in the monitoring compliance with the Profit Cap. Any funds not expended after the completion of the Town's determination of compliance with the Profit Cap shall be returned to the Developer.

In determining whether the Developer has conformed to the Profit Cap requirements of this Comprehensive Permit Decision, the CPA shall be required to certify that (a) the total profit to the Developer does not exceed twenty percent (20%) of total development costs of the Project, exclusive of development fees; (b) the Developer has not made unreasonable or excessive payments (i.e. payments in excess of reasonable industry standards applicable to an arm's length transaction) to the Developer or to its parents, subsidiaries, affiliates, successors, and assigns, or to their respective partners, limited partners, shareholders, managers, or other owners, or to the relatives of the same in connection with work performed on the Project in order to artificially inflate the costs of development of the Project; (c) there have been no commissions charged on the affordable units which are required to be sold pursuant to a lottery selection process as provided by this Comprehensive Permit; and (d) the CPA has been provided access by the Developer to any reasonable financial information necessary to make these determinations and to verify whether the income and expenses of the Project, including without limitation land acquisition costs, construction costs, landscaping costs, and other expenses, represent fair market value for such items, with particular attention to those arrangements between parties with overlapping ownership to owners of the Developer.

To the extent permitted by the DHCD, all costs of enforcement of this Profit Cap condition, including legal fees incurred by the Board and/or the Town of Acton, shall be borne by the Developer.

E.7 Regulatory Agreement - Prior to applying for a building permit for the Project, the Applicant shall submit to the Board a copy of a fully executed Regulatory Agreement between the Applicant, the Town and the DHCD, which will be recorded with the Master Deed, prior to the conveyance of the first unit, governing the protection and administration of the Affordable Units covered by this Decision The

Town shall have the right, concurrent with DHCD, to enforce the terms and conditions of the Regulatory Agreement. The Applicant shall support the Town's efforts to obtain DHCD approval of the Regulatory Agreement in substantially the same form as was approved by DHCD for the Davis Place, LLC Local Initiative Program project earlier this year.

E.8 DHCD and Financial Information - The Applicant shall forward to Town copies of all correspondence, documents, and information by and between the Applicant and the DHCD. Further, without limiting the foregoing, in addition to the Applicant's obligations to the DHCD, if the Town is not the monitoring agent with respect to determining the Project's profit: (a) upon issuance of a final certificate of occupancy for all of the Units, the Developer shall deliver to the Town an itemized statement of the Project's total development costs and gross income certified by a certified public accountant and every ninety (90) days thereafter until the last unit is sold; and (b) the Developer shall provide any back-up and supporting documentation, including, but not limited to, cancelled checks, invoices, receipts, and financial statements, reasonably requested by the Town for all Project costs and income sources.

F. Surety & Covenants

F.1 As security for the completion of the infrastructure related to the Project as shown on the Approved Plan, including, but not limited to, the driveways, sidewalks, parking areas, common areas, recreational areas, drainage facilities, utilities, landscaping, and [any other specific infrastructure shown on the plan] (the "Infrastructure"), the release of occupancy permits for all housing units and the sale of all housing units in the development shall be subject to the following restriction:

- (a) No occupancy permit for a unit in any building shall be issued, and no sale of any unit shall be permitted, until: (1) the base and binder course for the driveway and parking areas shown on the Plan has been installed; (2) all Infrastructure described herein and as shown on the Plan has been constructed or installed so as to adequately serve said building, provided however, that the final coat of pavement for the driveway and parking areas need not be installed in order to obtain occupancy permits for the first building constructed; and (3) all conditions of this Comprehensive Permit that require action or resolution by the Applicant prior to the issuance of occupancy permits have been completed to the satisfaction of the Building Commissioner. The roadway, common parking areas, individual driveways and all remaining Infrastructure must be fully completed and installed prior to the issuance of the occupancy permit for the 2nd building constructed.

G. Drainage Conditions

G.1 Stormwater shall be managed in accordance with the Massachusetts Stormwater Policy Manual dated March, 1997 as prepared by the Massachusetts Department of Environmental Protection and Massachusetts Office of Coastal Zone Management.

G.2 All stormwater drainage basins shall be located as to facilitate the maintenance and operation of the basins or drainage utility.

G.3 The Applicant shall maintain and repair the drainage structures and stormwater management system on the Site located outside the proposed roadway layout as shown on the Plans until such time as the Applicant either (1) sells the Site to the Developer or a new Applicant subject to these responsibilities or (2) assigns or otherwise transfers these responsibilities to the Condo Association. The stormwater management system includes, but is not necessarily limited to detention basins, retention basins, sediment forbays, and water quality swales. A plan for the maintenance of the stormwater management system shall be provided for in the Condo Association bylaws.

H. Parking

H.1 The Project shall provide for on-site parking as shown on the Plan.

H.2 No on-site parking shall be sold to, rented to, licensed to or otherwise conveyed to persons who are not occupants of premises located on the project Site.

I. Sidewalks

ACHC
The Applicant shall construct a sidewalk as shown on the Plan (Exhibit 16). The Applicant shall also contribute \$5,000.00 towards the Willow Street Sidewalk Design and Construction Fund at such time as this Decision is filed with the Town Clerk and the appeal period has expired. *ACHC will do.*

J. Outdoor Lighting

All outdoor lighting shall be installed in accordance with the requirements of the Acton Zoning Bylaw.

K. Board of Health Conditions

The Applicant shall comply with the Health Department's 5/9/2006 IDC Memo (Exhibit 5).

L. Landscaping Conditions

The Applicant shall comply with the Municipal Properties Department's 9/8/2006 IDC Memo (Exhibit 3).

M. Material Changes

If, between the date this Decision is filed in the office of the Acton Town Clerk and the completion of the Project, the Applicant desires to change in a material way and/or to a significant degree the proposed Project as reflected in and approved by this Decision, such changes shall be governed by 760 CMR 31.03(3). In no case shall the Applicant be allowed to implement a Project change that increases the number of units, decreases the number of affordable rate units, or increases the number of buildings on the Site, without submitting a new application and undergoing a new public hearing and decision process.

N. Expiration Date

If construction authorized by a comprehensive permit has not begun within three years of the date on which the permit becomes final, the permit shall lapse. The permit shall become final on the date that the written decision is filed in the office of the town clerk if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise disposed of. The Board may grant an extension to the three year lapse date for good cause shown, which shall include, for example, delay (notwithstanding the Applicant's diligent efforts) in the issuance of a governmental permit or approval or delay occasioned by a third party appeal of a governmental permit or approval required for the Project.

O. Notice to Abutters

At least seven days prior to the start of construction, the Applicant shall provide written notice to the Board and to the residential abutters of the Project of the anticipated construction start date and the anticipated construction schedule.

P. Transfer of Comprehensive Permit


The Applicant shall request a transfer of the comprehensive permit from the Board upon awarding the contract to construct the Project to successful bidder (the "Developer") under the RFP contemplated under Section II.A above. The transfer, if approved, may be deemed an "insubstantial change" to the comprehensive permit, as set forth under 760 CMR 31.08(5). No transfer shall be approved unless the Developer qualifies as a "limited dividend organization" under Chapter 40B, and any necessary approvals for the transfer from DHCD have been obtained by the Applicant and/or the Developer.

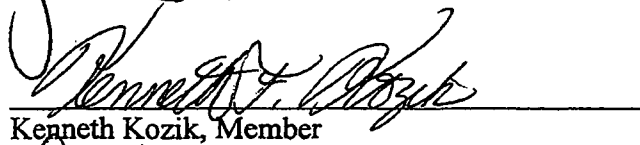
XI. CONCLUSION

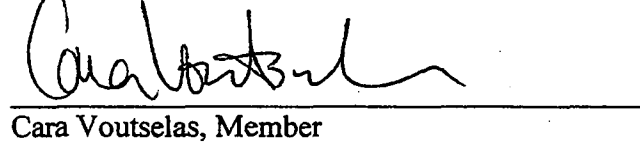
The Application for a comprehensive permit for the Project is granted for the reasons stated above subject to the conditions provided herein.

This concludes Decision 06-08 of the Acton Zoning Board of Appeals.

ACTON ZONING BOARD OF APPEALS


Jonathan Wagner, Chairman


Kenneth Kozik, Member


Cara Voutselas, Member

DATED: December 4, 2006

DISPOSITION AGREEMENT

1) PARTIES

This Agreement is entered into on this ____ day of _____, 2007, by and between the **Acton Community Housing Corporation**, a nonprofit corporation established pursuant to Chapter 143 of the Acts of 1996, with a principal place of business at Town Hall, 472 Main Street, Acton, MA 01720 (hereinafter called "ACHC" or "Seller") and _____, a Massachusetts _____,¹ with a principal place of business at _____ (hereinafter called the "Buyer" or the "Buyer").

2) DESCRIPTION

ACHC agrees to sell and the Buyer agrees to buy, upon the terms hereinafter set forth, that certain parcel of land with all buildings and improvements thereon situated in Acton, Middlesex County, Massachusetts, located at 28 Willow Street and 214 Central Street, shown as Lot 4 on an Approval Not Required Plan dated March 1, 2006, endorsed for the Acton Planning Board on March 22, 2006, and recorded in the Middlesex South Registry of Deeds as Plan No. 438 of 2006, consisting of 15,335 square feet more or less, with 104.33 feet of frontage (more or less) on Willow Street and 68.0 feet of frontage (more or less) on Central Street (the "Property").

The Property is to be conveyed with the benefit of a perpetual Access & Utility Easement granted to ACHC by Easement dated _____, _____, and recorded in the Middlesex South Registry of Deeds at Book _____, Page _____ (the "Easement").

The Property and the Easement are together hereinafter referred to as the "Premises."

3) TITLE DEED TO PREMISES

Said Premises is to be conveyed by a quitclaim deed running to the Buyer, or to the nominee designated by the Buyer by written notice to the ACHC at least seven days before the deed is to be delivered as herein provided; provided, however, that said nominee shall agree in writing to be bound (as and in addition to the Buyer) by the terms and conditions hereof through the Closing defined below and with respect to all provisions that survive said Closing. Said deed is to convey good and clear record and marketable title to the Premises, free from all encumbrances or interests, except:

- (a) Provisions of existing building and zoning laws and any permits for the Project (defined in Section 6 hereof) issued pursuant to federal, state or local law, including without limitation the Comprehensive Permit for the Project issued by

¹ Buyer shall be either a public agency, a non-profit organization, or a limited dividend organization formed for purposes of the acquisition and development of the Property.

the Acton Board of Appeals pursuant to M.G.L. Chapter 40B, dated December 4, 2006, and filed in the Acton Town Clerk's office on December 5, 2006, (the "Comprehensive Permit;" Exhibit A hereto). The terms, conditions and restrictions of the Comprehensive Permit are incorporated herein by reference, shall be incorporated in the deed from ACHC to the Buyer pursuant hereto, and shall survive the delivery of the deed to the Premises;

- (b) Such taxes or payments in lieu of taxes for the then current year as are due and payable on and after the date of delivery of such deed;
- (c) Any liens for municipal betterments as are due and payable on and after the date of delivery of such deed;
- (d) The terms, conditions and restrictions of reuse of the Premises imposed by ACHC pursuant to M.G.L. c. 30B, § 16, in a Request for Proposals dated _____, 2007 (the "RFP"), to which the Buyer responded. Those terms, conditions and restrictions of reuse set forth in the RFP are incorporated herein by reference, shall be incorporated in the deed from ACHC to the Buyer pursuant hereto, and shall survive the delivery of the deed to the Premises;
- (e) The right of reverter and re-entry held by ACHC described in Section 14 below, which shall be incorporated in the deed from ACHC to the Buyer pursuant hereto, which shall survive the delivery of the deed to the Premises, and which shall not be released until the completion of the Project;
- (f) The fee interest of the owner of the Easement to be conveyed by ACHC to the Buyer pursuant hereto; and
- (g) Any other easements and restrictions of record as of the date hereof.

If said deed refers to a plan necessary to be recorded therewith, ACHC shall reasonably cooperate with the Buyer in the production and delivery of such plan with the deed in form adequate for recording or registration, provided that ACHC shall not be obligated to spend more than \$1,000.00 including attorneys' fees incurred in connection with its obligations under the provisions of this Section. In addition to the foregoing, if the title to the Premises is registered, ACHC's deed shall be in a form sufficient to entitle the Buyer to a Certificate of Title to the Premises, and the ACHC shall deliver with said deed all instruments, if any, reasonably necessary to enable the Buyer to obtain such Certificate of Title.

The Buyer hereby acknowledges and accepts that ACHC's title to the Premises as of the date of this Agreement is acceptable to Buyer for all purposes. The Buyer shall have rights with respect to defects in ACHC's title only with respect to defects in title arising after the date of this Agreement, which Buyer claims in a subsequent written notice to ACHC. The Buyer hereby

waives and accepts title to the Premises subject to any defects in title existing as of the date of this Agreement.

In the event that ACHC, having used reasonable efforts to cure any defects claimed in a notice given pursuant to the immediately preceding paragraph (subject to the limitation that ACHC shall not be obligated to spend more than \$1,000.00 including attorneys' fees incurred in connection with such efforts), is unable to cure the defects claimed in such notice within thirty (30) days after the date of such notice is given, ACHC shall have the right to terminate this Agreement upon notice to Buyer.

4) CONSIDERATION

The Premises shall be conveyed by ACHC to the Buyer in consideration of:

1. _____ Dollars (\$_____.00) to be paid by the Buyer to ACHC at the Closing of the Premises,² and
2. The Agreements and Covenants hereinafter set forth.

5) TIME FOR PERFORMANCE

Subject to any extension herein provided, and further subject to the provisions of this Section 9, performance by ACHC and the Buyer hereunder with respect to the sale of the Premises from ACHC to the Buyer (the "Closing") shall occur on _____, 2007 (the "Closing Date").³

The Closing shall occur at the offices of ACHC's counsel (Anderson & Kreiger LLP, One Canal Park, Cambridge, MA, 02141), or, upon ten days prior written notice to ACHC, at the office of the Buyer's construction loan lender or lender's attorney in Massachusetts. As part of the Closing, the Buyer shall execute, deliver and record a Non-Disturbance and Recognition Agreement or other recordable instrument reasonably satisfactory to counsel for ACHC and the Buyer, senior to other mortgages and liens on the Premises, securing ACHC's rights pursuant to this Agreement which are to survive delivery of the deed.

6) PROJECT

Subject to any extension that may hereafter be provided in writing, on or before April 30, 2008, the Buyer shall, at its sole expense, perform and complete all work necessary for the design and construction and occupancy of three residential condominium units in two buildings on the Premises, together with related improvements, all in strict conformity with the terms, conditions,

² Note: From Line 1 of RFP Price Summary Form.

³ The Closing Date shall be designated by ACHC at the time the award letter is issued, and it shall be more than 45 days but less than 60 days from the date of ACHC's award letter, unless otherwise agreed by the parties.

plans, specifications, exhibits, and requirements of the RFP which are incorporated herein by reference (the "Project").

At the time of Closing, the Buyer shall execute and record a Declaration of Restrictive Covenants and Affordable Housing Restriction pursuant to Massachusetts General Laws, Chapter 184, §§ 31-33, and other applicable law ("Covenant"), which shall be consistent with the requirements of the RFP and the Comprehensive Permit, with such amendments as are reasonably satisfactory to ACHC, the Buyer and the Project's lender(s) evidencing the Buyer's obligation to develop and use the Premises in accordance with such Covenant. Such Covenant shall be recorded in the chain of title to the Premises, senior to any mortgage, lien, or other restriction.

The provisions of this Section shall survive the delivery of the deed to the Premises to the Buyer.

7) TIME OF ESSENCE

Time is of the essence to this Agreement and all actions required hereunder.

8) POSSESSION AND CONDITION OF PREMISES

Full possession of the Premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of the Closing, said Premises to be then (a) in the same condition as they now are, and (b) free and clear of personal property and equipment belonging to ACHC. The Buyer shall be entitled to inspect said Premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.

The condition of the Premises as of the date of this Agreement is hereby deemed to meet the requirements of this Section. The Buyer shall take the Premises subject to any violations of building and zoning laws existing as of the date of this Agreement.

9) EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM

If the ACHC shall be unable on the Closing Date to convey title or deliver possession of the Premises, all as herein stipulated, or if at the time of delivery of the deed the Premises do not conform with the provisions hereof, then the ACHC shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Premises conform to the provisions hereof, as the case may be, in which event the time for performance hereof shall be extended for thirty days, provided that ACHC shall not be obliged to expend more than \$2,000 to be deemed to have used reasonable efforts; provided further, however, that this \$2,000 limit shall not apply to the removal of any encumbrance voluntarily created and recorded after the execution hereof which was agreed to by the ACHC. If on or before the end of such extended time, ACHC shall have failed so to remove any defects in title, all as herein agreed, then all obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto. In no event shall ACHC be liable for damages, consequential damages, or

incidental damages in the event of such termination. The Buyer shall have the election, at either the original or any extended time for performance, to accept such title as the ACHC can deliver to the Premises in its then condition and to perform hereunder, in which case the ACHC shall convey such title.

10) ACCEPTANCE OF DEED

The acceptance of the deed of the Premises by the Buyer or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed or to survive delivery of said deed.

11) USE OF PURCHASE PRICE TO CLEAR TITLE

To enable ACHC to make conveyance of the Premises as herein provided, ACHC may (if not paid prior to the Closing Date), at the time of delivery of the deed, use the Purchase Price, or any part thereof, to obtain the instruments necessary to clear the title of any encumbrances or interests which are to be discharged, removed or eliminated by ACHC in accordance with the terms hereof, and all required instruments are to be recorded by and at the expense of the Buyer, simultaneously with the deed or within a reasonable time thereafter, in accordance with local conveyancing practices. ACHC shall not be obligated to spend more than \$1,000.00 including attorneys' fees, incurred to obtain any instrument required under the provisions of this Section.

12) PAYMENT OF REAL ESTATE TAXES

ACHC's performance hereunder with respect to the Closing is conditioned upon Buyer making any required payment in lieu of taxes, at Closing, in accordance with M.G.L. c. 44, § 63A.

13) PERMITS AND FINANCING

(a) Permits for the Project.

Within 45 days after the Closing (or such other date as the parties agree in writing), the Buyer shall apply for and diligently pursue issuance of a building permit or building permits and all other necessary governmental permits, licenses and approvals necessary for the construction of the Project (collectively the "Governmental Approvals").

(b) Financing commitments for the Project.

Prior to the Closing, the Buyer shall secure a commitment or commitments for construction financing for the Project from institutional lenders at prevailing rates and terms (collectively, the "Financing Commitment"). A Financing Commitment shall be deemed to have been "issued" when a commitment letter containing conditions which the both Buyer and ACHC reasonably

deem acceptable and expect to be satisfied as a matter of course prior to the Closing is delivered to the Buyer by such lender(s).

If the Buyer fails timely to obtain such a Financing Commitment prior to the Closing, this Agreement shall, at the option of ACHC, be void without further recourse to the parties hereto and all obligations of the parties hereto shall cease, provided that the Buyer and ACHC agree that if the Buyer has, in the reasonable judgment of ACHC, diligently pursued such Financing Commitment, ACHC may extend the time period set forth in this Section for a reasonable period of time.

14) REVERTER AND RE-ENTRY; ASSIGNMENT

In the event that, for any reason, the Buyer does not timely apply for the Governmental Approvals or timely complete the construction of the Project within the time frames established hereunder, then the Premises shall be subject to an immediate right of reverter and re-entry by ACHC. The deed of the Premises from ACHC to the Buyer shall set forth the terms of this right of reverter and re-entry which shall be consistent with this Section.

The Buyer hereby assigns to ACHC all of its right, title and interest in and to and to use and rely on the plans, drawings, surveys, and other architectural, engineering and survey work product related to the Premises and/or the Project performed to date and hereafter for the Buyer by any architect, engineer, designer, or similar professional (the "Project Documents"), said Assignment to be effective in the event of such reverter and re-entry. This assignment shall be subordinate to any prior assignment of such Project Documents to any construction lender that advances funds for the construction of the project.

Within 30 days of the execution hereof, the Buyer shall deliver to ACHC from each such architect, engineer, designer, or similar professional firm or person (a) written consent to the foregoing Assignment, and (b) written extension to the ACHC of the right to rely on and use said plans, drawings, surveys, and other architectural, engineering and survey work product related to the Premises and/or the Project as fully and completely as if the ACHC had been the original client for whom said services were performed.

The provisions of this Section shall survive the Closing, the exercise of the right of reverter and re-entry by ACHC, and/or any termination of this Agreement.

15) REAL ESTATE TAXES

ACHC agrees that it will not enter into any agreement with the Town of Acton after the date of execution hereof which creates any local real estate tax liability with respect to the Premises or which would commit the owner of the Premises to a payment in lieu of taxes. The parties agree that the Buyer will be responsible for any local real estate taxes that may be lawfully assessed

against the Premises from the date of the Closing until such time as the units are conveyed to other parties.

16) BROKER

Each party warrants and represents that it has not been introduced to the other by a broker, agent or finder, and each party agrees to hold the other harmless against any cost, expense or liability (including reasonable attorneys' fees) related to any claim arising out of breach of such warranty. This obligation shall survive the Closing or any termination of this Agreement.

17) BUYER'S DEFAULT

If the Buyer shall breach this Agreement or shall fail to timely and completely fulfill all of its obligations herein set forth, then after due notice from ACHC and reasonable opportunity (not to exceed 10 days from said notice) to cure, ACHC shall have the right:

- a. to terminate this Agreement (if the Closing has not yet occurred),
- b. to obtain an order for immediate specific performance of this Agreement and all of the terms, conditions and restrictions hereof,
- c. to exercise its right of reverter and reentry as set forth in this Agreement,
- d. to receive restitution of any ACHC Grant Subsidy as set forth herein, and/or
- e. to pursue all other remedies to which it is entitled.

18) CERTIFICATION OF COMPLIANCE WITH TAX LAWS

In accordance with G.L. c. 62C, § 49A, Buyer shall certify, in the form attached hereto as Exhibit B, under the pains and penalties of perjury, that Buyer has complied with all laws of the Commonwealth of Massachusetts relating to the payment of taxes. Such certification shall be made again and executed as of the time of Closing.

19) BENEFICIAL INTEREST DISCLOSURE STATEMENT

In accordance with G.L. c. 7, § 40J, the Buyer shall prepare, execute, deliver at Closing, and file with the Commissioner of the Division of Capital Asset Management a statement, in the form attached hereto as Exhibit C, signed under the pains and penalties of perjury, disclosing the names and addresses of all persons having a beneficial interest in the Premises, at the time of Closing.

20) TOWN MEETING AND SELECTMEN'S AUTHORIZATION

Disposition of the Premises has been authorized as follows:

- by a vote of the Acton Town Meeting under Article 29 of the 2006 Acton Annual Town Meeting, a copy of which is attached hereto as Exhibit D, and
- by a vote of the Acton Board of Selectmen pursuant to Sections 2(d) and 2(g) of Chapter 143 of the Acts of 1996, as indicated below.

21) UNIFORM PROCUREMENT ACT

The parties enter into this Agreement as a result of the Buyer's response to ACHC's Request for Proposals dated _____, 2007, issued pursuant to M.G.L. c. 30B, § 16 (the "RFP"). In accordance with the RFP, sealed proposals were received at ACHC's Office and publicly opened and read aloud on the date specified in the RFP. This Agreement incorporates by reference all terms and conditions of the RFP and of the ACHC's award letter, a copy of which is attached as Exhibit E.

22) WARRANTIES AND REPRESENTATIONS

The Buyer acknowledges that the Buyer has not been influenced to enter into this transaction nor has it relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing.

23) CLOSING DOCUMENTS:

A. ACHC's Documents.

At the Closing, ACHC shall deliver to Buyer the following duly executed (and notarized) documents or instruments:

- (1) Quitclaim Deed to the Property together with the Easement, in accordance with the provisions of this Agreement (together with the original certificate of title (if available) if any portion of the Property constitutes registered land).
- (2) An affidavit in the form reasonably required by Buyer's title insurer for the purposes of deleting from the owner's and lender's title policies the standard exceptions for parties in possession and mechanics' liens and any liens for sums owed to municipal lighting plants and water companies.

- (3) An affidavit establishing that ACHC is not a foreign person as defined in I.R.S. Code Section 1445 (and the regulations promulgated thereunder) in the form recommended by the Internal Revenue Service for the purpose of establishing that the withholding requirements of said Section 1445 do not apply to this transaction.
- (4) Any forms required to comply with Internal Revenue Service reporting requirements.
- (5) All other instruments which may be reasonably necessary to establish Buyer as the record owner of title to the Property, in accordance with the requirements of this Agreement.
- (6) Any documents reasonably required by Buyer's mortgage lender or its counsel not inconsistent herewith.
- (7) Any other documents required to be delivered at the Closing pursuant to this Agreement.
- (8) A statement showing the amount of any applicable payment in lieu of taxes due calculated in accordance with MGL Chapter 44, Section 63A.

B. Buyer's Documents.

At the Closing, Buyer shall deliver to ACHC the following duly executed (and notarized) documents or instruments:

- (1) Disclosure of beneficial interest in real property transaction executed as of the Closing Date.
- (2) Non-delinquency statement required by M.G.L. Chapter 60, Section 77B executed as of the Closing Date.
- (3) If applicable, a certified or bank check payable to ACHC in the amount set forth in the statement showing the payment in lieu of taxes due, delivered to Buyer in accordance with this Agreement.
- (4) Acknowledgment regarding Title V inspection requirements.
- (5) Certificate on Non-collusion executed as of the Closing Date.
- (6) Certificate of the payment of taxes executed as of the Closing Date.

- (7) Long form Certificate of Buyer's Legal Existence with Amendments for a domestic [corporation/partnership/limited liability company] issued by the Secretary of the Commonwealth of Massachusetts, dated within thirty (30) days prior to Closing.
- (8) [Secretary's/Partners'/Manager's] Certificate as to authority of Buyer to purchase the Property and authority of individuals authorized to execute documents with respect to the transaction, dated within thirty (30) days prior to Closing.
- (9) Buyer's waiver of any right to terminate this Agreement.
- (10) A certified or bank check payable to ACHC in the amount of \$ _____, as required by Section 4 of this Agreement.
- (11) A certified or bank check payable to ACHC in the amount of \$500 to be deposited in an account established by ACHC to cover its expenses in overseeing the Lottery (See Comprehensive Permit page 12).
- (12) A certified or bank check payable to the Town of Acton in the amount of \$4,500 to be deposited in an escrow account established by the Town pursuant to G.L. c. 44, § 53G, to be expended (with any accrued interest thereon) at the direction of the Board of Selectmen to cover the Town's expenses in the monitoring compliance with the Profit Cap in Comprehensive Permit Condition § E.6. Any funds not expended after the completion of the Town's determination of compliance with the Profit Cap shall be returned to the Developer. See Comprehensive Permit Condition § E.6.
- (13) Any other documents required to be delivered at the Closing pursuant to this Agreement.

24) CONSTRUCTION OF AGREEMENT

This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, merges all prior and contemporaneous agreements, understandings, warranties or representations, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both ACHC and Buyer. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.

25) NOTICES

All notices required or permitted hereunder shall be deemed to have been duly given if in writing and delivered by hand or when mailed by registered or certified mail, return receipt requested, all charges paid, as set forth below:

If to the Buyer, notice shall be sent to:

with a copy to:

If to the ACHC, notice shall be sent to:

Nancy Tavernier
Acton Community Housing Corporation
Town Hall
472 Main Street
Acton, MA 01720

with a copy to:

Stephen D. Anderson, Esq.
Anderson & Kreiger LLP
One Canal Park
Cambridge, MA 02141

26) LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, ETC.

If the ACHC or Buyer executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the representative of ACHC nor the Buyer so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

27) ACCESS TO PROPERTY AND INDEMNITY TO ACHC

Prior to the Closing, the Buyer shall have the right, from time to time, for reasonable cause and upon prior notice and approval of ACHC to enter upon the Property at Buyer's sole risk and expense, for the purpose of surveys or other inspection. Buyer shall indemnify and hold ACHC harmless from and against any claims for injury to persons or damage to property arising out of

Buyer's or Buyer's agents' acts or omissions during the course of such surveys or other inspection. Buyer's obligation to indemnify ACHC as provided herein shall survive the termination of this Agreement and the delivery of the Premises Deed.

28) BUYER'S INSPECTION OF PREMISES

Buyer agrees and acknowledges that Buyer has been given full and ample opportunity to inspect the Premises prior to execution of this Agreement and that Buyer has, in fact, fully inspected the Premises (or declined to do so on an informed and willing basis) and is satisfied in all respects with the condition thereof; that Buyer is purchasing the Premises in an "as is" condition, without representation or warranty of any kind, either express or implied; and that ACHC has made no warranty or representations whatsoever on which Buyer has relied, including, without limitation, any warranties or representations concerning (a) the condition of the Premises (including, without limitation, relating to environmental matters), (b) title, (c) zoning, or (d) any other matter relating to the Premises. Further, to the extent ACHC may have made any warranties and representations at all concerning the Premises, Buyer hereby releases and discharges ACHC from any and all claims, demands, causes of action and suits whatsoever which Buyer now has or at any time hereafter may have which relates in any way to the (i) the condition of the Premises (including, without limitation, relating to environmental matters), (ii) title, (iii) zoning, (iv) any other matter relating to the Premises, or (v) by virtue of any such warranty or representation. The provisions of this paragraph shall survive delivery of the deed of the Premises.

29) ACHC'S SUBSIDY

In accordance with the requirements of the RFP, the Buyer has requested and ACHC has approved a subsidy for the Project in the amount of \$ _____ conditioned upon full and timely completion of the Project in accordance with this Agreement. Buyer understands that ACHC's willingness and ability to provide this subsidy is conditional upon the issuance of permanent occupancy permits by the Acton Building Commissioner for all three residential units in the Project on or before April 30, 2008 (or such further time as ACHC may in its sole and absolute discretion allow in writing). If said occupancy permits are not issued on or before April 30, 2008, or such further time as ACHC may allow in writing, then ACHC shall have no obligation to provide any subsidy under this Agreement.

In consideration of the foregoing subsidy, the Buyer shall install a commemorative monument at the Property, at ACHC's cost and expense, prior to initial occupancy of the Project, consisting of a granite stone or boulder, 2 to 4 feet high, with a 6" by 9" bronze plaque inscribed: "Dedicated to the memory and generosity of Joseph A. Lalli. The Steinberg-Lalli Charitable Foundation." This monument shall be located on the Property at a location and date specified by ACHC prior to occupancy.

The provisions of this section shall survive delivery of the deed.

30) MISCELLANEOUS

This instrument is to be governed by Massachusetts law, shall take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and permitted assigns, and may be canceled, modified or amended only by a written instrument executed by both the ACHC and the Buyer. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it. This Agreement may be executed in counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

The provisions of this Agreement which are to survive the Closing shall take precedence over and survive the recording of any Master Deed under G.L. c. 183A and any other transaction related thereto.

The provisions of this Agreement which are to survive the Closing shall also survive termination of this Agreement and any exercise of the right of reverter to the extent necessary to enforce ACHC's rights hereunder.

This Agreement has been authorized by ACHC and the Buyer by votes of their respective Boards as set forth on the Certificates of Vote attached hereto as Exhibit F and Exhibit G.

The Buyer shall not assign this Agreement to any other person or entity without the express written permission of ACHC.

WITNESS the execution hereof under seal the ____ day of _____, 2007.

BUYER:

Name:

Position:

COMMONWEALTH OF MASSACHUSETTS)

)ss:

COUNTY OF MIDDLESEX)

On the ____ day of _____, 2007, before me, the undersigned Notary Public, personally appeared, _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily and for its stated purpose, and as such was authorized to execute this instrument.

(Official signature and seal of notary)

Notary Public: _____

My Commission Expires: _____

ACHC:

Acton Community Housing Corporation

By: Nancy Tavernier

Its: Duly Authorized Chair

COMMONWEALTH OF MASSACHUSETTS)

)ss:

COUNTY OF MIDDLESEX)

On the _____ day of _____, 2007, before me, the undersigned Notary Public, personally appeared, Nancy Tavernier, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose as the authorized official of the Acton Community Housing Corporation and, as such, was authorized to execute this instrument.

(Official signature and seal of notary)

Notary Public: _____

My Commission Expires: _____

APPROVED AS TO FORM

Stephen D. Anderson, Town Counsel

ANDERSON & KREIGER LLP

One Canal Park

Cambridge MA 02141

Phone: 617-252-6575

Approval of the Acton Board of Selectmen

Pursuant to Sections 2(d) and 2(g) of Chapter 143 of the Acts of 1996, the Acton Board of Selectmen, at a meeting duly called for the purpose on _____, 2007, voted to approve and does hereby approve the disposition of the Premises by the Acton Community Housing Corporation described herein for the purposes stated.

Acton Board of Selectmen,

Walter M. Foster, Chairman

Andrew D. Magee

Lauren S. Rosenzweig

Peter K. Ashton

F. Dore' Hunter

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX

On this ____ day of _____, 2007, before me, the undersigned Notary Public, personally appeared each of the foregoing named members of the Board of Selectmen of the Town of Acton, proved to me through satisfactory evidence of identification, which was: examination of _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as the foregoing named members of the Board of Selectmen of the Town of Acton, a municipal corporation.

(Official signature and seal of notary)

Notary Public: _____

My Commission Expires: _____

EXHIBIT O

CONSTRUCTION SPECIFICATIONS

The Work shall be performed strictly in accordance with the following specifications and must meet or exceed the requirements of the Comprehensive Permit and the current Federal, State of Massachusetts and Town of Acton's Building Code requirements. Note that in instances where the regulations and codes have changed since the original publication of these specifications, the developer is to conform to the current regulations and codes. The execution of all work shall be in strict accordance with these specifications and manufacturer's written specifications or Material's Institute Standards. Where the manufacturer's recommended details are used, the manufacturer shall be responsible for the performance of their product. All work not specifically mentioned that is required to make the work complete and operational shall be included. The specifications that follow are intended to provide the basis for three completely finished homes, anything not expressly set forth but which is reasonably implied or necessary for proper performance of these individual homes shall be included.

Codes - Construction shall comply with all applicable national, state and local building codes. It is the responsibility of the developer to insure compliance with said codes and modify the specifications as needed to comply with such codes.

Workmanship - Workmanship shall conform to the best and highest standards of quality in each trade and shall include all items of fabrication, construction and installation. All work shall be completed by skilled tradesmen and mechanics. Installation of all equipment and materials shall be in strict accordance with manufacturer's recommendations.

1. To minimize the impact on the natural landscape, the lot will be cleared only to the extent necessary to dig the foundation holes, install the septic system, construct yard, and build the driveways. All trees to be saved will be marked with a ribbon. Clearing cannot commence without meeting with Acton's Tree Warden.
2. The floor plans and building exterior designs of the three homes shall be built to match the "Maugel Architectural Drawings;" Exhibit N.
3. The exterior porch decking, railings and steps will be constructed with Trex or of a similar quality wood and plastic composite lumber product.
4. Foundation locations will be accomplished by developer's engineer or surveyor in conjunction with the "Maugel Architectural Drawings;" Exhibit N and the Sewage Disposal Plans for the Project in Exhibit I.
5. Each dwelling unit shall have a full basement of poured concrete floors and walls, with a bulkhead for each unit. The duplex's basement will have a poured concrete

wall to divide the individual basements.

6. Doorways on main floor shall provide at least 32 inches of clear passage space. All interior doors shall be solid six panel doors. All Exterior doors shall be 36 inches wide. The exterior front doors on the Central Street Duplex shall be 36" by 80" six panel doors, they shall have 10 or 12 inch clear glass full lite sidelites on the left and right sides of each door. The side doors of all three homes shall have 36" by 80" nine lite two panel doors. The front door of the Willow Street home shall have 36" by 80" six panel door. Each exterior door shall have an exterior porch light.
7. Insulation methods shall meet or exceed State of Massachusetts' Building Code requirements. Common walls between dwelling units must be insulated for fire and sound dampening, using isolated stud walls with resilient bars, acoustical mineral wood and soundproofing mat along the separating wall, or its equivalent.
8. Notwithstanding the above, all energy provisions mandated by the Massachusetts State Building Code which exceed the above requirements will take precedence.
9. Three onsite subsurface septic systems shall be installed as approved by the Board of Health, complying with all Title 5 requirements. The sewage disposal systems have been designed and approved, as set forth in the "Sewage Disposal Permit," Exhibit H and Sewage Disposal Plans in Exhibit I.
10. Windows shall be residential quality white vinyl combination storm/ full screen insulated glass. (2/2 simulated divided light with exterior casings that are five inches or wider). See Mangel Architectural Drawings, Exhibit N.
11. Heating systems must be Energy Star gas-fired forced hot air units. The hot water heaters must be gas-fired with a minimum capacity of 40 gallons.
12. At least a half-bathroom should be provided on the main floor and a full bathroom on the second floor of each unit. Washing machine and dryer hookups shall be provided on the second floor and an outside dryer vent installed in each unit. The washer shall be equipped with a single lever shut off and a pan with a drain. Bathrooms shall meet the requirements and size as set forth in the "Architectural Drawings;" Exhibit N. .
13. Kitchen Appliances shall be brand new. The ranges shall be 30 inches wide, self-cleaning, four burner, 4.5 cu. Ft. or larger, also must have oven windows and clocks. The refrigerators shall be 18cu. ft or larger to fit in an opening of 36 inches. The dishwashers shall be 24 inches wide. Range hoods are required and must be vented to the outside. All appliances shall be matching colors and Energy Star Compliant when Energy Star ratings are available for that type of appliance.

14. Kitchen counter tops are to be of a laminated plastic or better material. Kitchen cabinets face frames, doors and draw fronts must be constructed of solid wood with a factory applied finish. .
15. Floors are to be covered with wall-to-wall carpet, Manufacturer Shaw or equivalent, Style Masterly 2, Color Shantung installed over an industry-approved pad and underlayments. Kitchen and bathroom floors are to be covered with vinyl sheet goods of generally neutral colors and/or patterns. All floor coverings must have a minimum warranted life of 10 years. Hardwood and tile floors are desirable but not required, and may be shown in the Price Proposal as an option.
16. Each unit's driveway must accommodate parking for at least 2 cars and surfaced with bituminous concrete to meet the requirements detailed in the Comprehensive Permit Plan.
17. Roofs must be constructed of asphalt shingles with no less than 30 year life. See "Maugel Architectural Drawings", sheet number A. 201
18. House interiors must be completely finished and painted with a primer coat and two (2) finish coats. Walls and ceiling will be constructed of plaster or drywall. Walls shall get one coat of primer and two coats of Benjamin Moore or equivalent, wall color "Feather Down", egg shell finish paint. Ceilings shall get one coat of primer and two coats of flat white ceiling paint. Interior trim shall be solid wood 3.5 inches or wider. Interior trim and doors shall get one coat of primer and two coats of Benjamin Moore or equivalent "White Dove" low lustre. Exterior doors shall get one coat of exterior primer and two coats of exterior gloss paint. All painted services shall get as many coats of paints that are required to get complete coverage.
19. House exterior walls and trim must be completely finished according to "Maugel Architectural Drawings", sheet number A. 201.
20. An attic access panel must be supplied for each unit.
21. Basement access will be stairs from the interior of the house leading to the basement and bulkheads shall be installed as indicated on the "Maugel Architectural Drawings;" Exhibit N.
22. Mail boxes shall be installed on-site at location chosen by Acton's Post Master.
23. Electric outlets must be installed to meet the requirements of the MA State Building Code. Each home shall have telephone outlets installed each bedroom

and kitchen. Each home shall have cable TV outlets installed in each bedroom and living room.

24. Landscaping shall be installed to meet the requirements of the Comprehensive Permit landscape plan as detailed in Exhibit J. The site shall have a grass lawn properly installed with six inches of topsoil. The shrubbery areas shall have 12 inches of topsoil.
25. Each of the three homes shall have separately supplied and metered gas, water and electricity. Each home shall have their own Acton Water District supplied and metered potable water connection.
26. Storm water runoff shall be retained onsite. Runoff will be directly recharged via roof drain drywells and an infiltration trench, as indicated on the site plan, and must meet the requirements of the Comprehensive Permit.
27. The RFP Respondent's contractor shall supply the following homeowner's warranty to each unit buyer, with a copy to ACHC: each unit in this development shall be covered by a third-party extended warranty of at least five years in duration recognized as acceptable by a federal agency such as the Federal Housing Administration (FHA).